

United States
Circuit Court of Appeals

For the Ninth Circuit.

13

PACIFIC STATES SAVINGS & LOAN CORPORATION, a corporation, substituted for Reconstruction Finance Corporation, a corporation,

Appellant,

vs.

LEO F. SCHMITT, as Receiver of BANK OF NEVADA SAVINGS & TRUST COMPANY, CARSON VALLEY BANK, TONOPAH BANKING CORPORATION and VIRGINIA CITY BANK,

Appellees.

Transcript of Record

Upon Appeal from the District Court of the United States for the District of Nevada.

FILED

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
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Messrs. BROBECK, PHLEGER & HARRISON,
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San Francisco, California, and

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HERRINGTON,

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San Francisco, California,

For the Plaintiff and Appellant.

Messrs. PLATT & SINAI,

First National Bank Bldg.,

Reno, Nevada,

For the Defendant and Appellee. [1*]

*Page numbering appearing at the foot of page of original certified Transcript of Record.

In the District Court of the United States of
America, in and for the District of Nevada.

In Equity

No. H-117

RECONSTRUCTION FINANCE

CORPORATION, a corporation,

Plaintiff,

vs.

LEO F. SCHMITT, as Receiver of BANK OF
NEVADA SAVINGS & TRUST COMPANY,
CARSON VALLEY BANK, TONOPAH
BANKING CORPORATION and VIRGINIA
CITY BANK,

Defendants.

BILL OF COMPLAINT FOR INJUNCTION
AND DECLARATORY RELIEF

Plaintiff complains of defendants and for cause
of action alleges:

I.

That at all of the times herein mentioned, Recon-
struction Finance Corporation was and now is a
corporation organized and existing under and by
virtue of the laws of the United States of America.

II.

That at all of the times herein mentioned The
[2] Reno National Bank was and now is a national
banking association, organized and existing under

and by virtue of the banking laws of the United States of America, and having its principal office and place of business in the City of Reno, State of Nevada.

III.

That at all of the times herein mentioned, each of the following were and now are corporations organized and existing under and by virtue of the laws of the State of Nevada:

- Bank of Nevada Savings & Trust Company
- Carson Valley Bank
- Tonopah Banking Corporation
- Virginia City Bank
- Humboldt-Lovelock Irrigation Light & Power Co.
- Old Channel Ditch Company
- Union Canal Ditch Company
- Young Ditch Company

IV.

At all of the times herein mentioned, John G. Taylor, Inc. was and now is a corporation organized under the laws of the State of Wyoming.

V.

That after due investigation of the financial condition of The Reno National Bank, the Comptroller of the Currency of the United States of America found said bank to be insolvent, and on or about the 9th day of December, 1932, in accordance with the statutes of the United States of America in such cases made and provided, appointed Walter J.

Tobin Receiver of said bank and of the assets thereof.

That thereafter, and on the 12th day of December, 1932, said Walter J. Tobin duly qualified as such Receiver [3] and ever since has been and now is the Receiver of said The Reno National Bank.

VI.

That thereafter such proceedings were duly had and taken in and by the District Court of the State of Nevada in and for the First Judicial District, that by orders and judgments duly given and made by said court on the 28th day of February, 1934, Leo F. Schmitt was appointed Receiver of each of the following banking corporations:

Bank of Nevada Savings & Trust Company
Carson Valley Bank
Tonopah Banking Corporation
Virginia City Bank

That immediately thereafter said Leo F. Schmitt duly qualified as such Receiver and ever since has been and now is the duly appointed, qualified and acting Receiver of said corporations, and of the business, property and assets of each thereof.

VII.

That on the ninth day of June, 1930, and for many years prior thereto, John G. Taylor was the owner of the following number of shares of the capital stock of the respective companies indicated:

37,273 shares Class A stock of Humboldt-Love-
lock Irrigation Light & Power Company

2,857 shares of Young Ditch Company
150 shares of Union Canal Ditch Company
[4]
1,121-1/3 Shares of Old Channel Ditch Company

That said shares of stock are hereinafter referred to as "said water stock" and said companies are hereinafter referred to as "said water companies".

VIII.

That by virtue of his ownership of certain lands situate in the Lovelock Valley, more particularly described in the schedule hereunto annexed and marked Exhibit A, the ownership of said water stock vested in the said John G. Taylor certain rights (hereinafter referred to as "water rights") to receive from the respective water companies certain quantities of water for use upon said lands, and/or to the use of the ditches and other facilities of the respective water companies for the conveyance of water to said lands.

IX.

That said water rights, as well as said water stock, now are and at all times have been connected with, belonging, appurtenant or incident to the said lands referred to in the next preceding paragraph hereof, or used in connection therewith, and of such nature as to pass with a conveyance of said lands. That without said water rights said lands are arid and practically without value.

X.

That on the ninth day of June, 1930, said John G. Taylor made, executed and delivered to John G. Taylor, Inc., a corporation organized and existing under and by virtue of the laws of the State of Wyoming, a deed conveying to said John G. Taylor, Inc. all property, real, personal and mixed, then owned by the said John G. Taylor, [5] within the State of Nevada, save and except property standing in his name and located within the corporate limits of the City of Lovelock, State of Nevada. That said deed was duly acknowledged so as to entitle it to be recorded and that the same was duly recorded in the offices of the County Recorder of the Counties of Pershing, Humboldt and Elko, State of Nevada, on or about the 12th day of June, 1930. That no part of the lands referred to in Paragraph VIII hereof, or of said water stock or said water rights was or is located within the corporate limits of the City of Lovelock, State of Nevada. That by virtue of said deed all of said lands, water stock and water rights passed to and became vested in the said John G. Taylor, Inc.

XI.

That at all times since the execution and delivery of said deed, John G. Taylor has been president of John G. Taylor, Inc. and owner of all of its issued and outstanding capital stock excepting only directors' qualifying shares.

XII.

That on the 12th day of March, 1932, said John G. Taylor, Inc. made, executed and delivered to The Reno National Bank its promissory note payable on demand to the order of The Reno National Bank, in the principal amount of \$700,000.00. That simultaneously with the execution and delivery of said promissory note, said John G. Taylor, Inc., for the purpose of securing the payment of said promissory note, made, executed and delivered to The Reno National Bank a real estate mortgage and a chattel mortgage. That each of said mortgages was duly acknowledged by the said John G. Taylor, Inc. [6] so as to entitle it to be recorded and each of said mortgages was in fact recorded in the office of the County Recorders of the Counties of Humboldt, Pershing and Elko, State of Nevada. That thereafter, an error having been discovered in said real estate mortgage, the said John G. Taylor, Inc. on or about the 27th day of April, 1932, for the purpose of securing the said promissory note, made, executed and delivered to The Reno National Bank a new real estate mortgage dated as of the 12th day of March, 1932, which said real estate mortgage was duly acknowledged so as to entitle it to be recorded, and the same was duly recorded in the offices of the County Recorders of the Counties of Humboldt, Pershing and Elko, State of Nevada.

XIII.

That in and by each of the real estate mortgages mentioned in the next preceding Paragraph hereof,

the said John G. Taylor, Inc. mortgaged unto The Reno National Bank all of the lands referred to in Paragraph VIII hereof, as well as all other lands and interests in lands which the said John G. Taylor, Inc. then owned, together with all water, water rights, water applications, water permits or privileges connected with, belonging, appurtenant or incident to the lands covered by said mortgage or used in connection with all or any part of said premises or used or usable in connection therewith, and all dams, reservoirs and ditches, canals and other works for storage or carrying [7] of water then owned by the mortgagor or in which the mortgagor then had or might thereafter acquire any interest, and all applications then pending in the office of the State Engineer of the State of Nevada for any and all water to be used upon any part or portion of said lands, or used in connection therewith.

That by virtue of said real estate mortgages said water stock and water rights were hypothecated for the payment of said promissory note in the principal amount of \$700,000.00.

XIV.

That at the time of the execution and delivery of the aforesaid promissory note in the principal amount of \$700,000.00, share certificates evidencing all of said water stock, duly endorsed for transfer, were or had been delivered to and were held by The Reno National Bank as further evidence of the hypothecation of said water stock and water rights

for the payment of the indebtedness evidenced by said promissory note.

XV.

That prior to the fifth day of May, 1932, The Reno National Bank endorsed, transferred and delivered the aforesaid promissory note of John G. Taylor, Inc. in the principal amount of \$700,000.00, to Reconstruction Finance Corporation, as collateral security for a loan far in excess of the amount of said promissory note. That Reconstruction Finance Corporation ever since has been the owner and holder of said promissory note and of all liens securing the same. That no part of the principal or interest of said promissory note of John G. [8] Taylor, Inc. has been paid, save and except that \$70,779.27 has been paid on account of the principal thereof, and that interest has been paid thereon to June 30, 1932. That there remains unpaid on account of the indebtedness for which said promissory note was endorsed, transferred and delivered to this defendant as collateral security, an amount far in excess of the principal amount remaining unpaid on said promissory note.

XVI.

That at all times prior to the 1st day of November, 1932, the businesses of both the Bank of Nevada Savings & Trust Company and The Reno National Bank were conducted in the same banking rooms. That the directors of both banks were the same and that the principal officers of both banks

were the same. That the entire issued and outstanding capital stock of the Bank of Nevada Savings & Trust Company was held by and vested in the directors of The Reno National Bank in trust for the shareholders of The Reno National Bank. That both banks were conducted as a single banking unit. That after the aforesaid promissory note in the principal amount of \$700,000.00 was endorsed, transferred and delivered to the Reconstruction Finance Corporation, the certificates evidencing said water stock, by some means unknown to Reconstruction Finance Corporation, found their way into the possession of the Bank of Nevada Savings & Trust Company, and at the time said Leo F. Schmitt was appointed Receiver of the Bank of Nevada Savings & Trust Company, were delivered to the said Leo F. Schmitt. That said Leo F. Schmitt, as Receiver of the Bank of Nevada Savings & Trust Company, by virtue of his possession of said certi- [9] ficates, asserts a lien on said water stock for the payment of three promissory notes in the aggregate principal amount of \$32,500.00, made, executed and delivered to the Bank of Nevada Savings & Trust Company by John G. Taylor, Inc. subsequent to the endorsement, transfer and delivery to the Reconstruction Finance Corporation of the said promissory note of John G. Taylor, Inc. in the principal sum of \$700,000.00. That said Leo F. Schmitt, in his capacity as Receiver of Tonopah Banking Corporation, Carson Valley Bank and Virginia City Bank, claims a lien as attaching creditor of John G.

Taylor, Inc. and/or John G. Taylor for an indebtedness in the aggregate principal amount of \$24,000.00.

XVII.

That in applying for the loan made by the Reconstruction Finance Corporation to The Reno National Bank, The Reno National Bank represented to the plaintiff that the aforesaid promissory note of John G. Taylor, Inc. in the principal amount of \$700,000.00 was secured by the hypothecation of the lands referred to in Paragraph VIII hereof, as enhanced in value by rights to the use of dams, reservoirs, ditches, canals and other works for the storage and carrying of water, which said rights plaintiff alleges to be the same as the water rights referred to in Paragraph VIII. That the Reconstruction Finance Corporation would not have made said loan to The Reno National Bank in the amount in which said loan was made, if said water rights and water stock were not to be hypothecated with the lands referred to in Paragraph VIII hereof.

XVIII.

That the Bank of Nevada Savings & Trust Company, at the time the aforesaid promissory note of John G. Taylor, Inc. in the principal amount of \$700,000.00 was endorsed, [10] transferred and delivered to the Reconstruction Finance Corporation, had full knowledge of the facts alleged in Paragraphs VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI and XVII.

XIX.

That the Tonopah Banking Corporation, Carson Valley Bank and Virginia City Bank, and each of them, at the time the aforesaid promissory note of John G. Taylor, Inc. in the principal amount of \$700,000.00 was endorsed, transferred and delivered to the Reconstruction Finance Corporation, had full knowledge of the facts alleged in Paragraphs VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI and XVII.

XX.

That said Leo F. Schmitt threatens to transfer, and unless enjoined by the order of this Honorable Court, will transfer the certificates in his possession evidencing said water stock to third persons, to the irreparable injury of Reconstruction Finance Corporation. That said Reconstruction Finance Corporation has no adequate remedy at law.

XXI.

That prior to the commencement of this action plaintiff obtained leave of the District Court of the State of Nevada for the First Judicial District to commence and prosecute this action.

Wherefore, plaintiff prays that the court enjoin the said Leo F. Schmitt, during the pendency of this action, from transferring or parting with possession of said certi- [11] ficates evidencing said water stock, and that the court make and enter its judgment declaring that said water stock and/or water rights are subject to and covered by the lien

of the aforesaid real estate mortgage and/or to the lien of the plaintiff for the payment of the aforesaid promissory note of John G. Taylor, Inc. in the principal amount of \$700,000.00, and that the rights and interests, if any, of the defendant in and to said water stock and/or water rights, if any, are junior and subordinate to the rights and interests and lien of the plaintiff, and generally declaring the rights of the plaintiff and the defendant in reference to said water rights and water stock in accordance with the provisions of section 400 of Title 28 of the United States Code; and awarding the plaintiff its costs of suit incurred herein and such other and further relief as may to the court seem meet and just in the premises.

RECONSTRUCTION FINANCE
CORPORATION,

By ALLARD A. CALKINS

Manager, San Francisco
Loan Agency.

WILSON McCARTHY

BROBECK, PHLEGER & HARRISON

Attorneys for Plaintiff. [12]

State of Nevada

County of Washoe.—ss.

Allard A. Calkins, being first duly sworn, deposes and says:

That he is the Manager of the San Francisco Loan Agency of the Reconstruction Finance Corporation, the plaintiff in the above-entitled action,

and that he makes this verification for and on behalf of said plaintiff corporation; that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true according to the best of his knowledge, information and belief.

ALLARD A. CALKINS

Subscribed and sworn to before me this 1st day of November, 1934.

[Seal] H. S. GORMAN

Notary Public in and for the County of Washoe,
State of Nevada.

My commission expires Oct. 6, 1937. [13]

EXHIBIT "A"

All those certain pieces or parcels of land, situate in the State of Nevada described as follows, to wit:

In Township 27 North, Range 31 East,
M. D. B. & M.

Section 3: All of said section.

Section 4: Fractional part of the east half of said section.

Section 10: Fractional part of the north half, and that portion of the southwest quarter of said section lying north of the Old Channel Ditch.

Section 20: The south half of the southeast quarter.

Section 21: The east half of the northwest quarter; the east half of the southeast quarter of the southwest quarter; that portion of the east half of said section lying on the west side of what is known as the Old River Channel.

Section 22: The N $\frac{1}{2}$ of the SW $\frac{1}{4}$; the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$, and 17 acres, more or less, in the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of said Section.

Section 28: The fractional E $\frac{1}{2}$ of the NE $\frac{1}{4}$ and that portion of the NW $\frac{1}{4}$ of said section lying on the west side of the Old River Channel.

Section 29: All of Section.

Section 30: The E $\frac{1}{2}$ of the SE $\frac{1}{4}$.

Section 31: The E $\frac{1}{2}$.

Section 32: Fractional part of the S $\frac{1}{2}$ of the NW $\frac{1}{4}$ and fractional part of the N $\frac{1}{2}$ of the SW $\frac{1}{4}$.

In Township 28 North, Range 31 East,
M. D. B. & M.

Section 26: The E $\frac{1}{2}$ of the E $\frac{1}{2}$ of said section.

Section 33: The E $\frac{1}{2}$ of the NE $\frac{1}{4}$ and the SE $\frac{1}{4}$.

Section 34: All of said section.

In Township 28 North, Range 32 East,
M. D. B. & M.

Section 2: The S $\frac{1}{2}$ of the SW $\frac{1}{4}$.

Section 16: The SE $\frac{1}{4}$ of the NE $\frac{1}{4}$.

In Township 30 North, Range 33 East,
M. D. B. & M.

Section 3: The NW $\frac{1}{4}$ of the NW $\frac{1}{4}$.

Section 18: The SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$.

Section 21: The S $\frac{1}{2}$.

Section 28: All of said section.

Section 30: The west half of the east half.

[Endorsed]: Filed Nov. 1st, 1934. [14]

[Title of District Court and Cause.]

DEMURRER

Comes Now defendant above named, and demurring to Plaintiff's complaint on file herein, for ground of demurrer alleges:

I.

That said complaint does not state facts sufficient to constitute a cause of action against said defendant.

Wherefore, said defendant prays that said plaintiff take nothing by its said action, and that said defendant be hence dismissed, with costs.

PLATT & SINAI

Attorneys for Defendant. [15]

I Hereby Certify that I am one of the attorneys for the above named defendant, and that in my opinion the foregoing demurrer is well founded in point of law.

JOHN S. SINAI

Attorneys for Defendant.

[Endorsed]: Filed Nov. 19, 1934. [16]

[Title of District Court and Cause.]

MINUTES OF COURT JUNE 8, 1936.

This being the time heretofore fixed for the hearing on defendant's demurrer, and the same coming on regularly this day, Messrs. Brobeck, Phleger & Harrison, of counsel, appearing by Mr. A. M.

Dreyer, for the plaintiff; and Samuel Platt, Esq., of counsel, appearing for the defendant. Counsel stipulate, for the purposes of the record, that this demurrer may be deemed a motion to dismiss. Following argument by counsel for the respective parties the matter is submitted to the Court. Mr. Platt now files memorandum of points and authorities and Mr. Dreyer states he, likewise, will file memorandum of points and authorities. It Is Ordered that the motion to dismiss herein be, and the same hereby is, overruled and the defendant allowed twenty days from and after this date within which to file answer. [17]

[Title of District Court and Cause.]

DEFENDANTS' ANSWER.

Now Come the above named defendants, through their attorneys, Messrs. Platt & Sinai, and by leave of Court first had and obtained, file this their Answer herein, and admit, deny and aver, as follows:

I.

Defendants admit the allegations of paragraphs I, II, III, IV, V, VI and VII of said Bill of Complaint. [18]

II.

Defendants deny that by virtue of the ownership of John G. Taylor of certain lands situated in the Lovelock Valley, more particularly described in

Exhibit A of said Bill of Complaint, that the ownership of said water stock, or any thereof, vested in the said John G. Taylor, certain, or any rights, (referred to in said Bill of Complaint as "water rights") to receive from the respective, or any, water company or companies, certain or any quantity or quantities of water for use upon, said lands, or any thereof, and/or to the use of the ditches, or any thereof, or other facilities of the respective water companies, or any thereof, for the conveyance of water to the said lands, or any thereof.

III.

Defendants deny that said water rights, or any thereof, as well as said water stock, or any thereof, or either or any, now are or ever were or at all times or at any time or times, have been connected with, belonging, appurtenant or incident, or any or either, to the said lands, or any thereof, referred to in said Bill of Complaint, or used in connection therewith; deny that said water rights, or said water stock, or any or either, or any part or portion thereof, was or ever has been of such nature as to pass with the conveyance of said lands. As to whether without said water rights, as referred to in paragraphs VIII and IX of said Bill of Complaint, said lands are arid and practically without value, these defendants have not sufficient information wherewith to express a belief, and, therefore, upon information and belief, deny the same. [19]

IV.

Defendants admit the allegations of paragraph X of said Bill of Complaint, with the exception of the last sentence thereof, and defendants admit that by virtue of said deed all of said lands passed to and became vested in the said John G. Taylor, Inc., but deny that any part or portion of said water stock or water rights passed to and became vested in the said John G. Taylor, Inc.

V.

As to whether at all times since the execution and delivery of said deed John G. Taylor has been President of John G. Taylor, Inc., and owner of all of its issued and outstanding stock excepting only directors' qualifying shares, these defendants have not sufficient knowledge whereby to express a belief, and therefore, upon information and belief, deny the same and place plaintiff on strict proof thereof.

VI.

Defendants admit the allegations of paragraph XII of said Bill of Complaint.

VII.

Defendants admit the allegations of the first paragraph of paragraph XIII of said Bill of Complaint; but in this connection aver that "all water, water rights, water applications, water permits or privileges connected with, belonging, appurtenant or incident to the lands covered by said mortgage, or used in connection with all or any part of said

premises, or used or usable in connection therewith, and all dams, [20] reservoirs and ditches, canals and other works for storage or carrying of water then owned by the mortgagor, or in which the mortgagor then had or might thereafter acquire any interest", as set out in said mortgage did not include, nor was never intended to include, any of the stock held by John G. Taylor individually in the various water companies and corporations set out in plaintiff's Bill of Complaint, nor did not create or establish, and was never intended to create or establish any lien or encumbrance of any kind, character or nature upon such stock, or any part or portion thereof.

Defendants deny that by virtue of said real estate mortgages, or any or either thereof, said, or any, water stock or water rights, were hypothecated for the payment of said promissory note in the principal amount of \$700,000, or in any other principal amount. Defendants allege that none of said water stock and water rights by virtue of said real estate mortgages, or either thereof, or at all, were hypothecated, by way of security, or collateral, or otherwise, to the Reno National Bank, to secure the payment of the promissory note referred to in paragraph XII of plaintiff's Bill of Complaint.

Defendants deny that at the time of the execution and delivery of the said promissory note in the principal amount of \$700,000, or at any other time, share certificates, or any certificate or certificates evidencing all or any part or portion of said water

stock, duly endorsed for transfer, or endorsed at all, were or ever had been delivered to or were or were or ever have been held, by the Reno National Bank as further, or any evidence of the hypothecation of said water stock or water rights, or either, for the payment of the indebtedness evidenced by said promissory note. [21]

VIII.

As to the allegations of paragraph XV of plaintiff's Bill of Complaint, these defendants have not sufficient knowledge whereby to express a belief, and, therefore, upon information and belief, deny the same and generally and specifically each and every part and portion and averment thereof, and place plaintiff on strict proof thereof.

IX.

Defendants admit that at all times prior to the 1st day of November, 1932, the businesses of both the Bank of Nevada Savings & Trust Company and the Reno National Bank were conducted in the same banking rooms. Defendants admit that the Directors of both banks were the same and that the principal offices of both banks were the same. Defendants deny that the entire outstanding and issued capital stock of the Bank of Nevada Savings & Trust Company were held by and vested in the Directors of the Reno National Bank in trust for the shareholders of the Reno National Bank. Defendants deny that both banks were conducted as a single unit; and in this connection defendants al-

lege that since the organization of each of said banks, and ever since, the Reno National Bank was a Federal Bank organized under the laws of the United States of America, and that the Bank of Nevada Savings & Trust Company was a state bank organized under and by virtue of the laws of the State of Nevada; that each of said banks was a separate and distinct corporation one from the other, and during all of the times that each was open for the conduct of business, each of said banks held itself out to the public, patrons, deposit- [22] ors and others with whom it transacted business, as a separate and distinct banking institution one from the other, and so conducted its business with patrons, depositors and persons with whom it dealt. That as to whether after the promissory note in the principal amount of \$700,000 was endorsed, transferred and delivered to the Reconstruction Finance Corporation, the certificates evidencing said water stock found their way into the possession of the Bank of Nevada Savings & Trust Company by some means unknown to Reconstruction Finance Corporation, these defendant have no definite knowledge whereby to express a belief, but upon information and belief, deny the same, and in this connection defendants aver that the share certificates of so-called water stock, referred to in said Bill of Complaint, came into the possession of the Bank of Nevada Savings & Trust Company through hypothecation and pledge by way of security for the payment of certain promissory notes duly exe-

cuted by John G. Taylor, Inc., and endorsed by John G. Taylor to Bank of Nevada Savings & Trust Company in the aggregate amount of \$32,500 for money actually borrowed by the said John G. Taylor, Inc., from the said Bank of Nevada Savings & Trust Company. That the certificates of stock in the various water companies referred to in said bill of complaint, were duly endorsed, hypothecated, transferred and delivered to Bank of Nevada Savings & Trust Company by said John G. Taylor, and the said John G. Taylor entered into a collateral security agreement, in writing, with Bank of Nevada Savings & Trust Company, pledging said so-called water stock as collateral security for the payment of all of his then present indebtedness to Bank of Nevada Savings & Trust Company and of all of his future indebtedness to said bank. Defendants admit that [23] at the time said Leo F. Schmitt was appointed Receiver of the Bank of Nevada Savings & Trust Company, the certificates evidencing said water stock were delivered to the said Leo F. Schmitt. Defendants admit that said Leo F. Schmitt as Receiver of the Bank of Nevada Savings & Trust Company, by virtue of his possession of said certificates, asserts a lien on said water stock for the payment of three promissory notes in the aggregate principal amount of \$32,500, made, executed and delivered to the Bank of Nevada Savings & Trust Company by John G. Taylor, Inc., subsequent to the endorsement, transfer and delivery to the Reconstruction Finance Corporation of the said

promissory note of John G. Taylor, Inc., in the principal sum of \$700,000. Defendants admit that said Leo F. Schmitt in his capacity as Receiver of Tonopah Banking Corporation, Carson Valley Bank and Virginia City Bank, claims a lien as attaching creditor of John G. Taylor Inc., and/or John G. Taylor for an indebtedness in the aggregate principal amount of \$24,000; but in this connection these defendants allege that the said Leo F. Schmitt as Receiver of the Bank of Nevada Savings & Trust Company, claims and asserts a lien upon said water stock for the indebtedness of John G. Taylor, Inc., to his said bank of Nevada Savings & Trust Company receivership, and in addition thereto an attachment lien for and on behalf of his other receivership trusts hereinabove referred to, upon such equities as may remain after his said first lien has been satisfied.

X.

As to whether in applying for the loan made by the Reconstruction Finance Corporation to the Reno National Bank, the Reno National Bank represented to the plaintiff that the [24] aforesaid promissory note of John G. Taylor, Inc., in the principal amount of \$700,000, was secured by the hypothecation of the lands referred to in paragraph VIII of said Bill of Complaint, as enhanced in value by rights to the use of dams, reservoirs, ditches, canals and other works for the storage and carrying of water, these defendants have not suf-

ficient knowledge whereby to express a belief, and, therefore, upon information and belief, deny the same, and place plaintiff on strict proof thereof. Defendants deny that said rights above referred to, are the same as the water rights referred to in paragraph VIII of said Bill of Complaint. As to whether the Reconstruction Finance Corporation would not have made said loan to the Reno National Bank in the amount in which said loan was made, if said water rights and water stock were not to be hypothecated to the lands referred to in paragraph VIII of plaintiff's complaint, these defendants have not sufficient knowledge whereby to express a belief, and, therefore, upon information and belief, deny the same. Defendants further aver that as to what the Reconstruction Finance Corporation would or would not have done, with respect to said loan, is entirely irrelevant and immaterial.

XI.

Defendants deny that the Bank of Nevada Savings & Trust Company at the time the aforesaid promissory note of John G. Taylor, Inc., in the principal amount of \$700,000 was endorsed, transferred and delivered to the Reconstruction Finance Corporation, had full, or any knowledge of the facts alleged in the various paragraphs of paragraph XVIII of plaintiff's Bill of Complaint; and in this connection defendants [25] admit that the Bank of Nevada Savings & Trust Company had knowledge of the allegations of paragraphs VII and

XII of said Bill of Complaint, but had no knowledge of paragraphs VIII, IX, X, XI, XIV, XV, XVI and XVIII of said complaint.

XII.

Defendants deny that the Tonopah Banking Corporation Carson Valley Bank and Virginia City Bank, and each or any of them, at the time the aforesaid promissory note of John G. Taylor, Inc., in the principal amount of \$700,000 was endorsed, transferred and delivered to the Reconstruction Finance Corporation, had full or any knowledge of the facts alleged in the various paragraphs set out in paragraph XIX of said Bill of Complaint; but in this connection defendants allege that said banking corporations had knowledge of the allegations of paragraphs VII and XII of said Bill of Complaint, but had no knowledge of paragraphs VIII, IX, X, XI, XIV, XV, XVI and XVIII of said complaint.

XIII.

Defendants deny that said Leo F. Schmitt threatens to transfer, and unless enjoined by the order of this honorable court, will transfer the certificates in his possession evidencing said water stock, to third persons, to the irreparable, or any, injury of Reconstruction Finance Corporation, or any one else. In this connection defendants allege that through agreement and stipulation with the plaintiff herein, said Leo F. Schmitt is holding said certificates of stock pending the termination of the within suit. [26]

And For a Further Affirmative Defense to Said Action, these defendants allege that the Bank of Nevada Savings & Trust Company loaned in cash John G. Taylor, Inc., the principal amount of \$32,500, for which said corporation gave its duly executed three several promissory notes duly and regularly endorsed by John G. Taylor. That in the course of said transaction said John G. Taylor hypothecated, transferred and delivered, together with other security, certificates of stock in the various so-called water companies and corporations set out in plaintiff's Bill of Complaint and executed with the Bank of Nevada Savings & Trust Company, a collateral agreement pledging said certificates of water stock as security for the payment of the notes. That at the time of the execution of said collateral agreement, both the Bank of Nevada Savings & Trust Company and the Reno National Bank by virtue of their common Board of Directors and officials, had full knowledge that the Reno National Bank had loaned John G. Taylor, Inc., the sum of \$700,000 and accepted a real estate mortgage referred to in said Bill of Complaint, but that also the Reno National Bank had full knowledge that the said John G. Taylor, Inc., had borrowed the sum of \$32,500 from the Bank of Nevada Savings & Trust Company and had pledged, hypothecated and delivered said water stock to said Bank of Nevada Savings & Trust Company as security for said loan and had likewise executed said collateral agreement. That the said Reno National Bank at the time it

loaned the said John G. Taylor, Inc., the sum of \$700,000 and accepted its promissory note, together with the real estate mortgage, and at the time it transferred said note and mortgage to the plaintiff Reconstruction Finance Corporation had, and always had full knowledge of the existence [27] of the various water stock corporations and full and complete knowledge that John G. Taylor was the principal owner and holder of the stock therein. Defendants further aver that the Reno National Bank accepted the real estate mortgage as security for the \$700,000.00 loaned to John G. Taylor, Inc., with full knowledge and understanding that said real estate mortgage did not contemplate the transfer or hypothecation or encumbrance or lien upon any of the stock held by John G. Taylor in said various water corporations, and that said real estate mortgage did not cover or include or embrace any lien or encumbrance upon any of the water or water rights, water ways, ditches, dams or reservoirs held, owned or controlled by any or all of said so-called water corporations, or that any of said waters, water rights, ditches, dams or reservoirs, so held, owned and controlled by any or all of said so-called water corporations, were appurtenant to or connected with the lands described in said mortgage, or referred to or included therein.

These defendants further allege that at the time the \$700,000 note and attendant mortgage were assigned to the plaintiff Reconstruction Finance Corporation by the Reno National Bank, none of said so-called water stock, or any share thereof, had been

hypothecated, transferred or delivered by John G. Taylor, or any one else, to the Reno National Bank, by way of additional security to the mortgage, or was ever held or possessed by the Reno National Bank, and that the plaintiff Reconstruction Finance Corporation accepted the assignment and delivery of the note and mortgage without any demand upon the Reno National Bank, or any one else, for the hypothecation, pledging, transferring or delivery of any certificates of stock in any of the so-called water companies and corporations. [28]

And For a Second, Further and Affirmative Defense, These Defendants Allege:

That the Humboldt-Lovelock Irrigation Light & Power Company, a corporation, and the other so-called water corporations in said bill of complaint referred to, are each and all corporations which were organized and maintained for profit, and that certificates and shares of stock therein, and particularly those of the Humboldt-Lovelock Irrigation Light & Power Company were sold, traded in and dealt with at market. That by virtue of their articles of incorporation and their by-laws, no limitation is or was placed restricting any person or class of persons from purchasing, holding or owning any shares or certificates of stock therein. That whatever rights with respect to the use or appropriation of water or waters upon any of the lands owned by any of the stockholders therein, emanated through contractual relations between the stockholders and the corporation or through affirmative action by their respective Boards of Directors; and

the use of any water or waters, reservoirs, ditches or rights of way, owned, held and controlled by said so-called water companies, is or was not restricted to the use of the stockholders therein.

And For a Third, Further, Separate Affirmative Defense Herein, These Defendants Allege:

That John G. Taylor, Inc., the mortgagor herein, owned no shares or certificates of stock in any or either of the so-called water companies and corporations referred to in said bill of complaint, could not, and by virtue of said mortgage, or otherwise, did not hypothecate nor could not have [29] hypothecated or transferred or conveyed or encumbered any part or portion of the water or waters or reservoirs or ditches or rights of way, held, owned and controlled by said water corporations or any thereof. And that at the time the said Reno National Bank, as mortgagee, accepted said mortgage from said John G. Taylor, Inc., it had full and complete knowledge that said John G. Taylor, Inc., had no title whatever to the water or waters, reservoirs, ditches, canals and rights of way then held, owned and possessed by Humboldt-Lovelock Irrigation Light & Power Company and other water corporations mentioned in said bill of complaint.

And For a Fourth, Further, Separate and Affirmative Defense, These Defendants Allege:

That the Reno National Bank, together with the Bank of Nevada Savings & Trust Company, operating by, under and through the same officials and Boards of Directors, had full and complete knowledge of the said mortgage referred to in said bill

of complaint and of the three several notes payable to the Bank of Nevada Savings & Trust Company secured by the hypothecation, transfer and delivery of the said so-called water stock. That should judgment be decreed herein, in favor of plaintiff, the said Bank of Nevada Savings & Trust Company would not only be deprived of any benefits from its said hypothecated stock security, but would suffer an irreparable and appreciable loss. That further, the said plaintiff in his said bill of complaint, while seeking equity, is not doing or tendering equity, and that said suit is unconscionable and inequitable.

PLATT & SINAI

Attorneys for Defendants. [30]

State of Nevada,
County of Washoe.—ss.

Leo F. Schmitt, being first duly sworn, upon oath, deposes and says: That he is one of the above named defendants, and makes this verification for and on behalf of all of said defendants; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge, except as to those matters therein alleged on information or belief, and as to those matters, he believes it to be true.

LEO F. SCHMITT

Subscribed and Sworn to before me this 23rd day of June, 1936.

[Notarial Seal] JOHN S. SINAI
Notary Public in and for the County of Washoe,
State of Nevada.

[Endorsed]: Filed June 24, 1936. [31]

[Title of District Court and Cause.]

SUPPLEMENTAL BILL OF COMPLAINT

Now comes Pacific States Savings & Loan Company, hereinafter called the complainant, and presents the following supplemental bill of complaint against the above-named defendant, and thereupon complains and alleges:

I.

That complainant at all times herein mentioned was and now is a corporation organized and existing under and by virtue of the laws of the State of California.

II.

That at all of the times herein mentioned, Pacific [32] States Auxiliary Corporation was and now is a corporation organized and existing under and by virtue of the laws of the State of California.

III.

That on the 1st day of November, 1934, Reconstruction Finance Corporation, a corporation organized and existing under and by virtue of the laws of the United States of America, duly filed its original bill of complaint against the defendant, in which said Reconstruction Finance Corporation prayed for certain relief, the particulars of which are set forth in full in the original bill of complaint filed in the office of the Clerk of this court on the 1st day of November, 1934, reference to which is hereby made as if the same was set forth herein in full.

IV.

That thereafter, to wit, on or about the 24th day of June, 1936, the defendant filed herein its answer to said bill of complaint.

V.

That on or about the 12th day of February, 1936, all of the right, title and interest of said Reconstruction Finance Corporation, and all other parties to that certain suit in equity lately pending in this court entitled "W. J. Tobin, as Receiver of The Reno National Bank vs. John G. Taylor, Inc., a corporation, et al'" and numbered in the files of this Court No. H-114, in and to the stock described in Paragraph VII of the original bill of complaint, and the lands described in the schedule annexed to said original bill of complaint and marked Exhibit "A", was in pursuance of the decree of foreclosure and sale given and made by [33] this Court in said suit in equity on the 24th day of October, 1935, conveyed by the Special Master in Chancery appointed for that purpose by said decree of foreclosure and sale, to W. J. Tobin, as Receiver of The Reno National Bank, an insolvent national banking association, who thereafter, to wit, on or about the 10th day of September, 1936, conveyed said stock and lands to Pacific States Auxiliary Corporation, which thereafter in turn conveyed the same to complainant; that by virtue of said conveyances, complainant has succeeded to and is now vested with all of the right, title and interest of

said Reconstruction Finance Corporation in and to said stock and lands.

VI.

That the defendant, as well as each of the corporations of which he is receiver, is a citizen or resident of the state and judicial district of Nevada; that complainant is a citizen and resident of the State of California; and that the amount in controversy in this litigation exceeds \$3,000, and that the jurisdiction of this Court over this cause has at no time been defeated.

Wherefore, complainant prays that it may be substituted as party plaintiff herein for said Reconstruction Finance Corporation, and that this cause may proceed to decree in complainant's favor, in accordance with the prayer of the original bill of complaint herein.

PACIFIC STATES SAVINGS
& LOAN COMPANY,
BROBECK, PHLEGER &
HARRISON

By N. J. BARRY

Its attorneys. [34]

We, the undersigned, attorneys for defendant, hereby admit service by copy of the within and foregoing complaint.

Dated: January 16, 1937.

PLATT & SINAI

[Endorsed]: Filed Jun. 18, 1937. [35]

[Title of District Court and Cause.]

OPINION AND DECISION

By the Court, Norcross, Judge.

This is a suit in equity to enjoin the sale of certain corporate stock in certain corporations and to obtain a declaration of the relative rights of Plaintiff and Defendant therein. The corporations were organized under the laws of the State of Nevada and are named as follows: Union Canal Ditch Company, Old Channel Ditch Company, Young Ditch Company and Humboldt Lovelock Irrigation Light and Power Company.

The testimony and evidence submitted establishes the following facts:

On and prior to June 9, 1930, John G. Taylor was the owner of certain irrigated lands in Lovelock Valley, particularly described in the bill of complaint. For many years prior to 1930 water for the irrigation of these lands had been and still is obtained from two sources—directly from the natural flow of the Humboldt River and from flood waters stored in the so-called [36] Pitt-Taylor Reservoir, which was and is owned by the Humboldt Lovelock Irrigation Light & Power Company. The water is conveyed from these sources to the lands by means of the Young Ditch, the Old Channel Ditch and the Union Canal, and certain other ditches. The ditches named have long been owned by incorporated ditch companies, namely the Young Ditch Company, The Old Channel Ditch Company and the Union Canal Company, the sole stockholders

of which have always been owners of land lying adjacent to the ditches. Taylor owned 1121-1/3 shares of the capital stock of the Old Channel Ditch Company, 2857 shares of the capital stock of the Young Ditch Company and 150 shares of the capital stock of the Union Canal Company. On June 9, 1930, John G. Taylor conveyed to John G. Taylor, Inc., all of his property, real, personal and mixed (excepting only property located in the corporate limits of the City of Lovelock) together with "all water rights, ditches and canals appurtenant to said land or used in connection therewith, and all shares of stock of any water corporation appurtenant to said land or the waters from which are used or have been used in connection with the irrigation or cultivation thereof. Water from the ditches and reservoir above mentioned had been applied to the beneficial use of the lands described in the bill of complaint long prior to the date of said deed. On April 17, 1932 John G. Taylor, Inc., as security for the payment of a promissory note in the principal amount of \$700,000. mortgaged to The Reno National Bank all of the real property which it then owned or should thereafter acquire, "together with all water rights, water applications, water permits or privileges connected with, belonging, appurtenant or incident to the lands covered by said mortgage or used in connection with all or any part of said premises, or usable in connection therewith, and all dams, reservoirs and ditches, canals and other works for the storage or carrying of water then owned or

thereafter acquired by the mortgagor or in which the mortgagor then had or might thereafter acquire any interest, and [37] all applications then pending in the office of the State Engineer of the State of Nevada for any or all water to be used upon any part or portion of said lands or used in connection therewith." Immediately after the execution of this mortgage, The Reno National Bank pledged it and the note which it secured, to the Reconstruction Finance Corporation, as security for a loan. A day or two after the Reconstruction Finance Corporation had made to The Reno National Bank a loan in excess of \$1,000,000 for the payment of which the Taylor mortgage was pledged as security, the Bank of Nevada Savings & Trust Company obtained from John G. Taylor a pledge agreement purporting to give to the Bank of Nevada Savings & Trust Company a lien upon the stock involved in this litigation as security for the payment of all existing or future indebtedness of John G. Taylor. At the time of the execution of the agreement neither John G. Taylor, Inc., nor John G. Taylor was indebted to the Bank of Nevada Savings & Trust Company, nor did either become indebted to that bank until some time later. A month or two after the delivery of the agreement the Bank of Nevada Savings & Trust Company lent to John G. Taylor, Inc., a total of \$32,500 and took from John G. Taylor, Inc., three promissory notes for the total amount mentioned. These notes were endorsed by John G. Taylor, individually.

The several ditch companies (namely, the Young Ditch Company, the Old Channel Ditch Company and the Union Canal Company) never have been operated for profit. Their functions in practice have at all times been and now are limited to the maintenance and operation of the ditches which they respectively own. Whatever revenue they have required has been obtained by assessments levied upon their shareholders. By virtue of the shareholdings the stockholders of each of the companies are entitled to ratable shares of the carrying capacities of the respective ditches proportionate to the number of shares which they hold. [38]

By State Court decree adjudicating relative rights of appropriators of water from the Humboldt River, the right to the use of water carried through the several ditches above referred to are adjudged to be appurtenant to the place of use. None of the ditch companies are adjudged to have any water rights, with the exception of the Union Canal Company, and as to this company its water rights are adjudged to be appurtenant to certain specifically described lands which are owned by shareholders of the company, but which are not involved in this litigation. The lands referred to in the bill of complaint are adjudged to have certain rights of appropriation of water from the Humboldt River, but these rights are of such late priority that unless water for the irrigation of the lands can be obtained from the Pitt-Taylor Reservoir, the lands, except in years of exceptional precipitation, are semi-arid

and practically without value. In other words, water from the Pitt-Taylor Reservoir is absolutely essential to the profitable operation of the lands.

The Pitt-Taylor Reservoir was and is owned by the Humboldt Lovelock Irrigation Light & Power Company, which in turn is possessed of the right to store certain quantities of water taken from the Humboldt River for use on certain designated lands, including among other lands, the property referred to in the bill of complaint. These rights are evidenced by Certificates No. 2130 and No. 2131. The said certificates contain the following provision:

“The stored waters as granted by this certificate are to be used only to supply any deficiency in the irrigation of vested right, lands herein listed as irrigated by direct diversion from the Humboldt River, and in no event shall such combined use exceed any duty of water decreed to such lands.”

All of the right, title and interest of the Reconstruction Finance Corporation, The Reno National Bank, and John G. Taylor, Inc. in and to the stock through foreclosure of the mortgage executed in favor of The Reno National Bank and mesne conveyances, has passed to and become [39] vested in Pacific States Savings & Loan Company, which has been substituted as plaintiff in this proceeding, and the question presented for the Court's decision is whether the defendant has any lien upon the stock superior to the title of the plaintiff. On the basis of the pledge agreement coupled with possession of

the certificates evidencing the shares, defendant, as Receiver of the Bank of Nevada Savings & Trust Company, asserts a lien upon the stock as security for Taylor's endorsement of the three notes mentioned and that such stock represents ownership of all the water rights in respect to the land described in the said mortgage.

Shortly prior to the time of the final submission of this case, this Court in another case had occasion to determine the main question of law herein involved. In the case of *United States v. Humboldt Lovelock Irrigation Light and Power Company*, 19 F. Supp. 489, there was presented the question whether the United States was the owner of certain water rights in the Humboldt River for which it had paid the then upstream owners \$419,000, for the purpose of changing the point of diversion downstream for use upon lands owned by others within a Government Reclamation Project—the Pershing County Water Conservation District. The United States in that case, like the ditch and reservoir companies in this case was not the owner of any land irrigated or to be irrigated by the water the ownership of which was or is in question. Relative to the law governing that question this Court in the opinion rendered in that case (p. 491) said:

“The law is well settled in this state (*Prosole v. Steamboat Canal Co.*, 37 Nev. 154, 140 P. 720, 144 P. 744) and in the states of the arid region generally, that water for irrigation is appurtenant to the lands irrigated and hence the prop-

erty of the owner of the land so irrigated. *Ickes v. Fox*, 65 App. D. C. 128, 85 F.(2d) 294, 298.”

When John G. Taylor transferred his land holdings to John G. Taylor, Inc., the land transfer carried with it all water rights appurtenant thereto, irrespective of any other [40] expressions in the deed of transfer. Such water rights, so appurtenant, include means of transportation through the ditches constructed for delivery of the same. It also included a right to the water stored in the so-called Pitt-Taylor Reservoir for the use of such land because the same would become appurtenant thereto. Rights to water for irrigation of arid lands within this state is wholly distinct from rights which may be evidenced by corporation stock certificates. A corporation, except in the case of a water supply for municipal purposes, may not acquire a title to water for irrigation, except in cases where such corporation is also the owner of land upon which such water is so used and so becomes appurtenant thereto. A corporation like the Steamboat Canal Company, referred to in the citation *supra*, may acquire rights to charge and collect for supplying a means of transportation from the point of diversion to the place of use but, as in that case held, the water so used becomes appurtenant to the land to which it is applied and the right to delivery of the water to the land is only subject to a conveyance charge.

None of the corporations, the stock in which is here involved appears to be the owner of irrigated

lands. Such stock, therefore, does not present any element of interest in rights to water as such, particularly is this the case of the several ditch companies. It does not follow however, that because said ditch companies and said Humboldt Lovelock Irrigation Light and Power Company may have no water rights such as is appurtenant to land owned by said companies, that the stock therein may not represent some other, more or less, valuable rights.

A reference to the articles of incorporation of the several companies do not disclose that they were organized for the sole or primary purpose of supplying water for irrigation of any particular land. In the case of the Humboldt Lovelock Light and Power Company, as indicated by its name, it was [41] incorporated for other purposes in addition to that of storing and transporting water for irrigation. Stock therein might necessarily have a value for reasons wholly distinct from the matter of supplying water for irrigation of lands which, by its charter, is not confined to any definite tracts.

Counsel for Defendant Receiver calls the Court's attention to the Nevada statutes relating to corporations organized under the laws of this State providing that "shares of stock in every corporation shall be personal property and shall be transferable on the books of the corporation, in such manner and under such regulations as may be provided in the by-laws." Nevada Compiled Laws ## 1617, 1722. The by-laws of each of the said corporations, the stock of which is here involved, makes provisions for such transfer.

Attention is also so directed to the State statute requiring a mortgage of personal property to have "appended or annexed thereto the affidavits of the mortgagor and mortgagee, * * * setting forth that said mortgage is made in good faith * * *." In the absence of such affidavit it is provided that the mortgage "is void as against creditors of the mortgagor and subsequent purchasers or incumbrancers of the mortgaged property in good faith and for value." Nevada Compiled Laws, #987. The mortgage to the Reno National Bank did not have appended such affidavits.

A considerable portion of the brief for Defendant Receiver, is devoted to a contention that the equities in this case are in favor of Defendant and for that reason Plaintiff is not entitled to any relief. This contention is based primarily upon the fact that the officers and directors of the Reno National Bank and the Bank of Nevada Savings and Trust Company were the same personnel and that the said loans made by the two banks respectively were handled mainly by the same official. The opinion and decision of this Court in *Schmitt, Receiver, v. [42] Reconstruction Finance Corporation*, Case No. H-78, dealing with the question of subordination agreements entered into between a number of State banks and the Reno National Bank, all having in whole or in the main a common directorate, is cited in support of the contention. Without determining whether there may or may not be equities also growing out of the facts involved in this case, it

is sufficient now to say that the rights of the parties to this proceeding are controlled by rules and provisions of law wholly independent of equitable principles controlling upon the facts presented in the case last referred to. As heretofore stated, it is settled law that water diverted from a natural water channel for irrigation of arid land becomes appurtenant to the land and is subject to any mortgage of such land and passes with any conveyance thereof. As water for the reclamation of arid lands by means of irrigation may not be supplied thereto without the aid of ditches or canals for that purpose, and in some cases, also, the use of storage reservoirs, the right to the water carries with it rights in the means of delivery thereto. Such rights, as before stated, may be subject to conditions such as maintenance costs and other proper charges, not necessary or possible here to fully consider and determine.

Plaintiff is entitled to a decree as against Defendant, Receiver, to the effect that Plaintiff, as owner of the land described in the Bill of Complaint, is owner of the water for irrigation thereof as appurtenant to said land and also owner of rights in the said ditches as means of transportation and of storage rights in said reservoir, subject to maintenance charges. Whether any such transportation or storage rights may or may not be subject to any other charge is not herein involved.

Plaintiff is not entitled to decree respecting the stock or certificates therefor, referred to in the pleadings, otherwise than as such stock or certifi-

ates thereof, may be affected by the decree to which Plaintiff is entitled as above indicated. [43]

The Plaintiff is granted a decree accordingly.

Each of the parties will pay their own costs of suit.

Plaintiff is directed to submit proposed findings of fact and form of decree.

Dated this 1st day of October, 1937.

FRANK H. NORCROSS

District Judge.

[Endorsed]: Filed October 1, 1937. [44]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS
OF LAW

This cause came on regularly for trial on the 17th day of January, 1937, before the court without a jury, and Messrs. N. J. Barry and Brobeck, Phleger & Harrison by Maurice E. Harrison, appearing as attorneys for plaintiff, and Messrs. Platt & Sinai, by Samuel Platt, Esq., for defendant Leo F. Schmitt, as Receiver of Bank of Nevada Savings & Trust Company, Carson Valley Bank, Tonopah Banking Corporation, and Virginia City Bank, and from the evidence introduced, the court finds the facts as follows, to-wit:

I.

That at all of the times herein mentioned Reconstruction Finance Corporation was and now is a

corporation organized and existing under and by virtue of the laws of the United States of America.

[45]

II.

That at all of the times herein mentioned The Reno National Bank was and now is a national banking association, organized and existing under and by virtue of the banking laws of the United States of America, and having its principal office and place of business in the City of Reno, State of Nevada.

III.

That at all of the times herein mentioned plaintiff, Pacific States Savings & Loan Company, was and now is a corporation organized and existing under and by virtue of the laws of the State of California.

IV.

That at all of the times herein mentioned each of the following were and now are corporations organized and existing under and by virtue of the laws of the State of Nevada:

Bank of Nevada Savings & Trust Company

Carson Valley Bank

Tonopah Banking Corporation

Virginia City Bank

Humboldt-Lovelock Irrigation Light & Power
Company

Old Channel Ditch Company

Union Canal Ditch Company

Young Ditch Company.

V.

That at all of the times herein mentioned, John G. Taylor, Inc. was and now is a corporation organized under the laws of the State of Wyoming.

VI.

That after due investigation of the financial condition of The Reno National Bank, the Comptroller of the Currency of the United States of America found said bank to be insolvent, and on or about the 9th day of December, 1932, in accordance with the statutes of the United States of America in such cases made and provided, appointed Walter J. Tobin, Receiver of said bank and of the assets thereof.

That thereafter, and on the 12th day of December, 1932 [46] said Walter J. Tobin duly qualified as such Receiver and ever since has been and now is the Receiver of said The Reno National Bank.

VII.

That thereafter such proceedings were duly had and taken in and by the District Court of the State of Nevada in and for the First Judicial District that by orders and judgments duly given and made by said court on the 28th day of February, 1934, Leo F. Schmitt was appointed Receiver of each of the following banking corporations:

Bank of Nevada Savings & Trust Company

Carson Valley Bank

Tonopah Banking Corporation

Virginia City Bank.

That immediately thereafter said Leo F. Schmitt duly qualified as such Receiver and ever since has been and now is the duly appointed, qualified and acting Receiver of said corporations, and of the business, property and assets of each thereof.

VIII.

That on the 9th day of June, 1930, and for many years prior thereto, John G. Taylor was the owner of the following number of shares of the capital stock of the respective companies indicated:

- 37,273 shares Class A stock of Humboldt-Lovelock Irrigation Light & Power Company
- 2,857 shares of Young Ditch Company
- 150 shares of Union Canal Company
- 1,121-1/3 shares of Old Channel Ditch Company.

That said shares of stock are hereinafter referred to as "said water stock" and said companies are hereinafter referred to as "said water companies".

IX.

That as more fully hereinafter set forth, by virtue of his (the said John G. Taylor's) ownership of certain lands situate in the Lovelock Valley, more particularly described in the schedule hereunto annexed and marked Exhibit "A", the [47] ownership of said water stock vested in the said John G. Taylor certain rights (hereinafter referred to as "water rights") to the use, in common with the other shareholders of said water companies, of the

reservoirs, ditches and other facilities of the respective water companies for the storage and transportation of water for use upon said lands.

X.

That on the 9th day of June, 1930, said John G. Taylor made, executed and delivered to John G. Taylor, Inc., a corporation organized and existing under and by virtue of the laws of the State of Wyoming a deed reading in part, as follows:

“That the party of the first part, * * * , does by these presents grant, bargain, sell and convey to the party of the second part * * * , all of the following described lots, pieces or parcels of land situated in the State of Nevada, and more particularly described as follows, to-wit: all property, real, personal or mixed, now owned by me and located in the State of Nevada, save and except such property * * * located within the corporate limits of the City of Lovelock, County of Peshing, State of Nevada.

“Together with the appurtenances and all rents, issues and profits thereof; also all water rights, ditches and canals appurtenant to said land or used in connection therewith, and all shares of stock of any water corporation appurtenant to said land, or the water from which are used or have been used in connection with the irrigation or cultivation thereof.”

That said deed was duly acknowledged and was thereafter duly recorded in the offices of the County

Recorders of the Counties of Pershing, Humboldt and Elko, State of Nevada, on or about the 12th day of June, 1930. That no part of the lands referred to in Paragraph IX hereof, or said water rights [48] was or is located within the corporate limits of said City of Lovelock. That by virtue of said deed all of said lands and water rights passed to and became vested in the said John G. Taylor, Inc.

XI.

That on the 12th day of March, 1932, said John G. Taylor, Inc. made, executed and delivered to The Reno National Bank its promissory note payable on demand to the order of The Reno National Bank, in the principal amount of \$700,000. That simultaneously with the execution and delivery of said promissory note, said John G. Taylor, Inc., for the purpose of securing the payment of said promissory note, made, executed and delivered to The Reno National Bank a real estate mortgage and a chattel mortgage. That each of said mortgages was duly acknowledged by the said John G. Taylor Inc. so as to entitle it to be recorded and each of said mortgages was in fact recorded in the office of the County Recorders of the Counties of Humboldt, Pershing and Elko, State of Nevada. That thereafter, an error having been discovered in said real estate mortgage, the said John G. Taylor, Inc. on or about the 27th day of April 1932, for the purposes of securing the said promissory note, made, executed and delivered to The Reno National Bank

a new real estate mortgage dated as of the 12th day of March, 1932, which said real estate mortgage was duly acknowledged so as to entitle it to be recorded, and the same was duly recorded in the offices of the County Recorders of the Counties of Humboldt, Pershing and Elko, State of Nevada.

XII.

That in and by each of the real estate mortgages mentioned in the next preceding paragraph hereof, the said John G. Taylor, Inc. mortgaged unto The Reno National Bank all of the lands referred to in Paragraph IX hereof, as well as all other lands and interests in lands which the said [49] John G. Taylor, Inc. then owned, together with all water, water rights, water applications, water permits or privileges connected with, belonging, appurtenant or incident to the lands covered by said mortgage or used in connection with all or any part of said premises, or used or usable in connection therewith, and all dams, reservoirs and ditches, canals, and other works for storage or carrying of water then owned by the mortgagor or in which the mortgagor then had or might thereafter acquire any interest, and all applications then pending in the office of the State Engineer of the State of Nevada for any and all water to be used upon any part or portion of said lands, or used in connection therewith.

XIII.

That prior to the fifth day of May, 1932, The Reno National Bank endorsed, transferred and de-

livered the aforesaid promissory note of John G. Taylor, Inc. in the principal amount of \$700,000.00, together with the mortgages securing the same, to Reconstruction Finance Corporation, as collateral security for a loan far in excess of the amount of said promissory note.

XIV.

That in making said loan to The Reno National Bank the Reconstruction Finance Corporation placed a value on the lands described in the schedule annexed to the complaint and marked Exhibit "A", based on the assumption that the said mortgages constituted a valid and paramount lien on all water rights appurtenant to said lands or in any way affected or evidenced by the stock referred to in Paragraph VIII hereof. That the Reconstruction Finance Corporation did not know nor did it have any reason to believe that any of the said water rights were evidenced by corporate stock, but assumed that the said rights were appurtenant to said lands so as to pass with a mortgage or conveyance thereof. That if the Reconstruction Finance Corporation suspected that any claim would be made that [50] said water rights were not covered by said mortgages, it would not have made to The Reno National Bank any loan in the amount which it did, but if it had made to said The Reno National Bank any loan at all, then and in such case the amount thereof would have been decreased at least to the extent of the value of said water rights.

XV.

That after the said Reconstruction Finance Corporation had made said loan to The Reno National Bank and said The Reno National Bank had pledged said note and mortgages to the Reconstruction Finance Corporation, the Bank of Nevada Savings & Trust Company obtained from John G. Taylor a pledge agreement purporting to give the Bank of Nevada Savings & Trust Company a lien upon the stock referred to in Paragraph VIII hereof, as security for the payment of all existing or future indebtedness of John G. Taylor; that at the time of the execution of said agreement, neither John G. Taylor, Inc. nor John G. Taylor was indebted to the Bank of Nevada Savings & Trust Company, nor did either become indebted to that bank until a month after the said mortgages had been pledged and assigned to the said Reconstruction Finance Corporation. That a month or two after the delivery of said pledge agreement and the pledge and assignment of said mortgages to the Reconstruction Finance Corporation, the Bank of Nevada Savings & Trust Company lent to John G. Taylor, Inc. a total of \$32,500 and took from John G. Taylor, Inc. three promissory notes for the total amount mentioned, which notes were endorsed by John G. Taylor individually. That by virtue of said pledge agreement, defendant Leo F. Schmitt, as receiver of Bank of Nevada Savings & Trust Company, asserted a lien upon the shares of stock referred to in Paragraph VIII hereof, for the payment of the indebtedness evidenced by said notes.

XVI.

That for many years prior to 1930, water for the [51] irrigation of the lands referred to in Paragraph XI hereof had been and still is, obtained from two sources, directly from the natural flow of the Humboldt River, and from flood waters stored in the so-called Pitt-Taylor Reservoir, which at all times herein mentioned was and now is owned by the Humboldt-Lovelock Irrigation Light & Power Company. That water is conveyed from these sources to the lands referred to in Paragraph XI of these findings by means of the Young Ditch, which is owned by the Young Ditch Company, the Old Channel Ditch, which is owned by the Old Channel Ditch Company, and the Union Canal, which is owned by the Union Canal Company, and certain other ditches. That at all of the times herein mentioned, water from the ditches and reservoir above-mentioned has been and now is, applied to beneficial use upon the lands described in Paragraph XI hereof.

XVII.

That the said Young Ditch Company, the Old Channel Ditch Company and the Union Canal Company have never been operated for profit; that their sole functions and practice have at all times been and now are limited to the maintenance and operation of the ditches which they respectively own, which, together with works for the diversion of water into said ditches, constitute their only assets. That at all of the time herein mentioned the said

companies have derived their only revenue from assessments levied upon their respective shareholders. That with few, if any, exceptions the shareholders of said companies at all of the times herein mentioned have been and now are owners of lands lying adjacent to the ditches owned by said companies. That by virtue of their shareholdings, the stockholders of each of said companies are entitled to ratable shares of the carrying capacities of the respective ditches proportionate to the number of shares which they respectively hold. [52]

XVIII.

That by a decree duly given and made by the Third Judicial District Court of the State of Nevada adjudicating the relative rights of the appropriators of water from the Humboldt River, the right to use the water carried in the ditches above referred to are adjudged to be appurtenant to the place of use. That neither the Young Ditch Company nor the Old Channel Ditch Company are adjudged to have any right to divert or appropriate water from the Humboldt River, that the Union Canal Company is adjudged to have certain water rights but said rights are declared and adjudged to be appurtenant to certain specifically described lands which are owned by shareholders of the company, but which are not involved in this litigation.

XIX.

That the lands described in Paragraph XI hereof are adjudged by said decree to have certain rights

of appropriation of water from the Humboldt River; that said rights are of such late priority that unless water for the irrigation of the lands described in Paragraph XI hereof can be obtained by the Pitt-Taylor Reservoir, the said lands, except in years in exceptional precipitation, are semi-arid and practically without value. That water from the Pitt-Taylor Reservoir is absolutely essential to the profitable operation of said lands, and that without the use of the ditches owned by the said Young Ditch Company, the Old Channel Ditch Company and the Union Canal Company, the said lands cannot be irrigated, and the use of said ditches is absolutely essential to the profitable irrigation of said lands.

XX.

That the Pitt-Taylor Reservoir was and is owned by the Humboldt-Lovelock Irrigation Light & Power Company. That the Humboldt-Lovelock Irrigation Light & Power Company is possessed of the right to store certain quantities of water taken from the Humboldt River for use on certain designated lands, including [53] among other lands the lands described in Paragraph XI hereof. That the rights of the Humboldt-Lovelock Irrigation Light & Power Company to store certain water are evidenced by certificates Nos. 2130 and 2131 issued by the State Engineer of the State of Nevada; that said Certificates contain the following provision:

“The stored waters as granted by this certificate are to be used only to supply any deficiency

in the irrigation of vested right, lands herein listed as irrigated by direct diversion from the Humboldt River, and in no event shall such combined use exceed any duty of water decreed to such lands.”

That in practice the sole functions of said Humboldt-Lovelock Irrigation Light & Power Company at all times have been and now are limited (a) to diverting and storing water for the exclusive benefit of lands owned or then owned by its stockholders, and (b) to the maintenance and operation, for the purpose of diverting and storing water for the benefit of lands owned or then owned by its stockholders, of said Pitt-Taylor Reservoir and works for the diversion of water into said reservoir; that said reservoir and diversion works constitute the sole and only tangible assets of said Humboldt-Lovelock Irrigation Light & Power Company; that said Humboldt-Lovelock Irrigation Light & Power Company has not at any time manufactured, sold, or distributed light or power, or engaged in any business or activity other than the business or activity of acting as the agent of its stockholders in diverting and storing water to be applied to a beneficial use upon the lands owned by such shareholders; that it has never been operated for profit; that its sole source of revenue has consisted of an annual charge collected from its stockholders on the basis of the quantity of water delivered to them and assessments levied upon its shareholders to make

up the deficiency of the revenue provided by said annual charge to cover the costs of maintaining and operating said Pitt-Taylor Reservoir and works for the diversion of water.

XXI.

That the Humboldt-Lovelock Irrigation Light & Power [54] Company has two classes of stock designated respectively as Class A stock and Class B stock; that the holder of each share of Class A stock is entitled to receive from said corporation that proportion of the first 10,000 acre feet of water stored in the Pitt-Taylor Reservoir, which the number of shares which he holds bears to the total issued and outstanding number of Class A shares of said corporation, for use upon lands lying adjacent to certain designated ditches, including among others the Young Ditch, the Old Channel Ditch and the Union Canal. That upon transfer of any shares of Class A stock of said corporation, except in connection with the transfer of the lands upon which said water has been applied to a beneficial use, said shares of Class A stock automatically become shares of said Class B stock.

XXII.

During the pendency of this action, in a suit to foreclose the mortgages given by John G. Taylor, Inc. to The Reno National Bank and pledged by The Reno National Bank to the Reconstruction Finance Corporation, as more particularly hereinbefore set forth, a decree of foreclosure and sale

was duly given and made by this Court, in pursuance of which all of the property, real, personal and mixed, of every nature and description, and where-soever situate, subject to said mortgages, was sold by a Special Master in Chancery appointed by this Court, to the Reconstruction Finance Corporation, which caused the said property to be conveyed by said Special Master in Chancery to W. J. Tobin, as Receiver of The Reno National Bank, in trust nevertheless for the Reconstruction Finance Corporation; that thereafter the property so conveyed to the said W. J. Tobin, as such receiver in trust as aforesaid, was by the said W. J. Tobin as such receiver, with the consent of the Reconstruction Finance Corporation, sold, transferred and conveyed to Pacific States Auxiliary Corporation, a California corporation, which corporation thereafter sold, transferred and conveyed the same [55] to Pacific States Savings & Loan Company; that thereafter said Pacific States Savings & Loan Company was substituted as the plaintiff in this action.

From the foregoing Findings of Fact, the Court draws the following:

Conclusions of Law.

I.

That Pacific States Savings & Loan Company is the owner of the lands described in Exhibit "A" attached to the complaint and of all water and water rights appurtenant thereto used for the irrigation of the same and rights to all means of transporta-

tion and storage of such appurtenant water rights, such as dams, ditches, canals and reservoirs, from the places or points of diversion to the places or points of use, subject only to normal costs of maintenance of such dams, ditches, canals and reservoirs.

II.

That, subject to the foregoing rights of Plaintiff, Pacific States Savings and Loan Company, Defendant, Leo F. Schmitt, as Receiver of Bank of Nevada Savings & Trust Company, Carson Valley Bank, Tonopah Banking Corporation and Virginia City Bank, is entitled to a lien on all the shares of stock referred to in Paragraph VIII of the Findings of Fact.

III.

That Plaintiff is not entitled to a judgment declaring said water stocks are subject to and conveyed by the lien of the real estate mortgage or to the lien of plaintiff for payment of the promissory note therein described or other than declaring the rights of the parties as set forth in the preceding Conclusions I and II.

Costs are not allowed either party.

Dated the 6th day of April, 1938.

(s) FRANK H. NORCROSS

District Judge.

[Endorsed]: Filed April 6, 1938. [56]

In the District Court of the United States of America, in and for the District of Nevada.

No. H-117.

PACIFIC STATES SAVINGS & LOAN COMPANY, a corporation, substituted for Reconstruction Finance Corporation, a corporation,
Plaintiff,

vs.

LEO F. SCHMITT, as Receiver of BANK OF NEVADA SAVINGS & TRUST COMPANY, CARSON VALLEY BANK, TONOPAH BANKING CORPORATION and VIRGINIA CITY BANK,

Defendant.

FINAL DECREE.

This cause for declaratory relief came on to be heard on January 17, 1937, and was thereafter, upon oral argument and briefs filed by respective counsel, submitted March 25, 1938. The Court having made Findings of Fact and Conclusions of Law, now in pursuance thereof, it is Ordered, Adjudged and Decreed as follows:

That the Plaintiff, Pacific States Savings & Loan Company, is the owner of the lands described in Exhibit "A" attached to the complaint and of all water and water rights appurtenant thereto used for the irrigation of the same and rights to and in all means of transportation and storage of such appurtenant water rights, such as dams, ditches,

canals and reservoirs, from the places or points of diversion to the places or points of use, subject only to normal costs of maintenance of such dams, ditches, canals and reservoirs.

That, subject to the foregoing rights of Plaintiff, Defendant, Leo F. Schmitt, as Receiver of Bank of Nevada [57] Savings & Trust Company, Carson Valley Bank, Tonopah Banking Corporation and Virginia City Bank, is entitled to a lien on all the shares of stock referred to in paragraph VIII of the Findings of Fact.

That Plaintiff is not entitled to a judgment declaring said water stocks are subject to and conveyed by the lien of the real estate mortgage or to the lien of plaintiff for payment of the promissory note therein described or other than declaring the rights of the parties as herein above set forth.

Costs are not allowed either party.

Dated this 6th day of April, 1938.

/s/ FRANK H. NORCROSS

District Judge.

[Endorsed]: Filed April 6, 1938. [58]

[Title of District Court and Cause.]

PETITION OF PACIFIC STATES SAVINGS
AND LOAN COMPANY FOR REHEARING

The petition of Pacific States Savings & Loan Company for a rehearing, respectfully shows:

1. On April 6, 1938, this court made and filed its findings of fact and conclusions of law and entered its final decree.

2. Plaintiff respectfully petitions the Court for a rehearing on the ground that the court erred in each of the following respects:

(a) In not concluding as a matter of law and decreeing that plaintiff is the owner of the [59] stock referred to in the bill of complaint;

(b) In not concluding as a matter of law and decreeing plaintiff to be entitled to the possession of the certificate evidencing said stock;

(c) In not concluding as a matter of law and decreeing that the rights to receive water from the respective companies and to use the diversion works, storage facilities, dams, ditches and other facilities for the diversion, storage and conveyance of water belonging to the respective companies (all of which rights are hereinafter in this petition referred to as water rights) are appurtenant to the land;

(d) In not concluding as a matter of law and decreeing plaintiff to be the owner of the said stock, free from any claim or lien on the

part of the defendant, at least to the extent necessary to the full enjoyment of the water rights evidenced thereby;

(e) In not enjoining the defendant from transferring the certificates evidencing said stock, except subject to the rights of the plaintiff as declared by the decree; and in not requiring defendant to surrender up the certificates evidencing said stock for the purpose of having endorsed thereon a legend to the effect that plaintiff is entitled to all of the water rights evidenced by said stock as declared by the decree;

(f) In not concluding as a matter of law and decreeing that plaintiff is entitled to vote the stock in respect to all matters relating to the rights which the Court has found to be vested in the plaintiff;

(g) In concluding as a matter of law and in decreeing that defendant in his capacity as Receiver of the Carson Valley Bank, Virginia City Bank and Tonopah Banking Corporation, has a lien on said stock;

(h) In concluding as a matter of law and decreeing that defendant in his capacity as receiver of Bank of Nevada Savings & Trust Company has a lien on said stock without specifying the amount or extent of such lien;

(i) In concluding and decreeing that plaintiff is not entitled to a judgment declaring the water stock to be subject to the real estate mortgage;

(j) In not concluding as a matter of law and decreeing that the deed executed by John G. Taylor to John G. Taylor Inc. under date of June 9, 1930 divested John G. Taylor of all right, title and interest in and to the stock involved in this litigation.

* * * (pp. 3 to 8 inc.) [60]

Wherefore, plaintiff respectfully prays that a rehearing may be granted and the Findings of Fact and Conclusions of Law and Final Decree be modified as herein prayed.

Respectfully submitted,

BROBECK, PHLEGER &

HARRISON

N. J. BARRY

T. W. DAHLQUIST

Attorneys for Plaintiff. [61]

State of California,
City and County of San Francisco.—ss.

A. M. Dreyer, being first duly sworn, deposes and says:

That he is one of the attorneys for the plaintiff in the above-entitled action; that he has read the foregoing petition for rehearing, and that he does now state that the grounds of said petition as stated therein are believed by him to be well taken and in conformance with the facts, decisions and authorities relating thereto, and that all allegations of fact

contained therein are true to the best of his knowledge, information and belief.

A. M. DREYER

Subscribed and sworn to before me this 19th day of April, 1938.

[Seal]

EUGENE P. JONES

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed April 20, 1938. [62]

[Title of District Court and Cause.]

MEMORANDUM DECISION RE PETITION
FOR REHEARING, MOTION TO VACATE
DECREE.

Norcross, District Judge:

Final decree was entered in this suit April 6, 1938. Plaintiff on April 20, 1938, filed a petition for rehearing and thereafter on April 26th filed a notice of motion for an order vacating the final decree and permitting plaintiff to file a Second Supplemental Bill of Complaint.

The only question presented in the original suit was that of ownership of certain stock certificates in certain corporations organized for the purpose of acquiring, constructing or operating certain irrigation ditches, dams and reservoirs, 20 F. Sup. 816. In accordance with that decision plaintiff's water rights were not affected by the mere ownership of the stock certificates, as such water rights and

means of conveyance thereof were appurtenant to the lands owned by plaintiff. [63]

The purpose of the proposed Second Supplemental Bill of Complaint is to make the particular corporations, four in number, defendants and obtain a final decree against such corporation defendants forever enjoining them and each of them "from transferring upon their books the said shares or any thereof, except subject to the rights of the plaintiff as declared by said decree, and from issuing any certificates evidencing said shares or any thereof unless such certificates and each of them bear a legend declaring the rights of the registered holders thereof to be subject to the rights of the plaintiff as declared by such final decree".

In accordance with the decree as heretofore entered plaintiff can at any time maintain an action against any of said companies in the event of interference with its water rights regardless of any question of stock ownership. We may assume such rights have been determined in the Humboldt River suit.

The Court is not impressed that any sound reason is presented for the granting of the Petition or Motion. *Cyclopedia of Federal Procedure*, Vol. 3, Sec. 917, Vol. 4, Sec. 1110; *New Equity Rule* 34; *21 C. J. Secs.* 660, 662.

The petition for rehearing and the motion to vacate the decree with permission to file a Second Supplemental Bill of Complaint should be denied.

It is so ordered.

Dated this 27th day of June, 1938.

FRANK H. NORCROSS

District Judge.

[Endorsed]: Filed June 27, 1938. [64]

[Title of District Court and Cause.]

PETITION FOR APPEAL

To the Honorable the United States District Court for the District of Nevada:

Comes now the plaintiff above-named, Pacific States Savings & Loan Company, a corporation, by its undersigned attorneys, and, feeling aggrieved by the decree made and entered in the above-entitled Court on April 6, 1938, which became final on June 27, 1938, upon the denial of a petition for rehearing seasonably made and filed and duly entertained by the Court, [65] hereby appeals from said decree to the United States Circuit Court of Appeals for the Ninth Circuit, and claims that there are manifest, material and prejudicial errors to its injury in said cause; that said errors are specifically set forth in the Assignment of Errors filed herewith upon which said appeal is based and to which reference is hereby made; and respectfully prays that said appeal be allowed and that a citation be issued in accordance with law; and that an authenticated transcript of the record, proceedings, exhibits and papers on the trial of this cause be sent to the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California.

And your petitioner further prays that an order be made fixing the amount of security to be given by appellant, conditioned as provided by law.

Dated: August 22, 1938.

BROBECK, PHLEGER &
HARRISON

ORRICK, DAHLQUIST, NEFF
& HERRINGTON

Attorneys for Plaintiff Pacific States
Savings & Loan Company. [66]

Receipt of a copy of the within Petition for Appeal is hereby admitted this day of, 1938.

.....
Attorneys for Defendant.

[Endorsed]: Filed Aug. 22, 1938. [67]

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS.

Comes now Pacific States Savings & Loan Company, a corporation, plaintiff in the above-entitled cause, and files the following Assignment of Errors, to wit:

1.

The Court erred in making and entering its decree that defendant is entitled to a lien on the shares of

stock described in the complaint herein (hereinafter called "water [68] stocks"), viz.,

37,273 shares Class A stock of Humboldt-Love-
lock Irrigation Light & Power Company;
2,857 shares of Young Ditch Company;
150 shares of Union Canal Company;
1,121 $\frac{1}{3}$ shares of Old Channel Ditch Com-
pany.

Said companies are hereinafter referred to collec-
tively as "water companies."

2.

The Court erred in making and entering its de-
cree that plaintiff is not entitled to a judgment
declaring that said water stocks are subject to and
conveyed by the lien of the real estate mortgage
described in the complaint herein.

3.

The Court erred in not making and entering its
judgment that plaintiff is the owner and entitled
to the possession of said water stocks and that de-
fendant has no right, title or interest therein or
thereto or any lien thereon.

4.

The Court erred in not making and entering its
decree that defendant surrender and deliver said
water stocks to plaintiff.

5.

The Court erred in finding, in Finding IX, that the ownership of said water stocks vested in John G. Taylor, the predecessor in interest of both parties hereto, the right to use in common with other shareholders of the water companies whose stocks are described in the complaint, the reservoirs, ditches and other facilities of said respective water companies for the storage and transportation of water for use [69] upon the lands then owned by said Taylor and now owned by plaintiff.

6.

The Court erred in finding, in Finding XVII, that by virtue of their shareholdings the stockholders of each of said water companies are entitled to ratable shares of the carrying capacities of the respective ditches owned by said companies proportionate to the number of shares which said stockholders respectively hold.

7.

The Court erred in failing to find that, by virtue of the deed described in Finding X, said water stocks were sold, assigned and transferred by John G. Taylor to John G. Taylor, Inc., a corporation.

8.

The Court erred in failing to find that, by virtue of the mortgage referred to in Finding XI and XII, said water stocks were mortgaged by John G. Taylor, Inc. to The Reno National Bank.

9.

The Court erred in failing to find that, by virtue of the transactions described in Finding XXII, plaintiff is now the owner and entitled to the possession of said water stocks.

10.

The Court erred in failing to find that at the time the pledge agreement and loan described in Finding XV were made, John G. Taylor had no right, title or interest in or to said water stocks and that the interest of John G. Taylor, Inc. therein was subject to the mortgage theretofore made by John G. Taylor, Inc. to The Reno National Bank, and that the Bank of [70] Nevada Savings & Trust Company at all said times had notice and knowledge that said water stocks had theretofore been sold by John G. Taylor to John G. Taylor, Inc. and by the latter mortgaged to The Reno National Bank.

11.

The Court erred in failing to find that said water stocks were and are appurtenant to the lands described and referred to in said complaint now owned by plaintiff, and that said water stocks were transferred by the deed and mortgage of said lands.

12.

The Court erred in denying leave to complainant to file a supplemental bill of complaint and to make

said water companies parties defendant herein, and in failing to reopen said case in order that a complete adjudication of the rights of the parties might be obtained.

Wherefore, said Pacific States Savings & Loan Company, a corporation, appellant, prays that the decree of the District Court of the United States for the District of Nevada, entered in the above-entitled cause on April 6, 1938, be reversed and said cause remanded to said District Court with directions to enter a decree as prayed for in the Bill of Complaint herein, and for such other and further relief as may be just and appropriate.

Dated this 22 day of August, 1938.

BROBECK, PHLEGER &
HARRISON
ORRICK, DAHLQUIST, NEFF
& HERRINGTON

Attorneys for Pacific States
Savings & Loan Company.

[71]

Receipt of a copy of the within Assignment of Errors is hereby admitted this.....day of, 1938.

.....
Attorneys for Defendant.

[Endorsed]: Filed Aug. 22, 1938. [72]

[Title of District Court and Cause.]

ORDER ALLOWING APPEAL.

The above-named Pacific States Savings & Loan Company, plaintiff in the above-entitled cause, having filed herein its Petition for an appeal from the decree made and entered in said cause on April 6, 1938, which became final on June 27, 1938, upon the denial of a petition for rehearing seasonably made and filed and duly entertained by the Court, and having filed herein its Assignment of Errors, and prayer for reversal, pursuant to the statutes and rules in such [73] cases provided, now, on motion of the attorneys for said petitioner,

It Is Hereby Ordered that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from said decree be and the same is hereby allowed; and

It Is Further Ordered that the Clerk of this Court prepare and certify a transcript of the record, proceedings, exhibits and papers on the trial of this cause pertinent to and necessary for determination of said appeal and transmit the same to the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within the time and in the manner provided by the statutes of the United States and the rules of Court; and

It Is Further Ordered that the appellant furnish a bond on appeal in compliance with law and the rules of Court, in the amount of \$500.00, the same to operate as a cost bond only.

Dated this 22nd day of August, 1938.

By the Court,

FRANK H. NORCROSS,

District Judge.

Attest:

[Seal] O. E. BENHAM,

Clerk of the United States District Court for the
District of Nevada.

By O. F. PRATT

Deputy Clerk. [74]

Receipt of a copy of the within Order Allowing
Appeal is hereby admitted this.....day of
....., 1938.

.....
Attorneys for Defendant.

[Endorsed]: Filed Aug. 22, 1938. [75]

[Title of District Court and Cause.]

UNDERTAKING ON APPEAL.

Know All Men By These Presents:

That Pacific Indemnity Company, a corporation
organized and existing under and by virtue of the
laws of the State of California, having power to
execute bonds and undertakings in judicial proceed-
ings and duly authorized to transact a general surety
business within the State and District of Nevada,
is held and firmly bound unto Leo F. Schmitt, as
[76] Receiver of Bank of Nevada Savings & Trust

Company, Carson Valley Bank, Tonopah Banking Corporation and Virginia City Bank, in the full and just sum of \$500.00, for the payment of which, well and truly to be made to said Leo F. Schmitt, as Receiver of Bank of Nevada Savings & Trust Company, Carson Valley Bank, Tonopah Banking Corporation and Virginia City Bank, it binds itself, its successors and assigns, jointly and severally by these presents.

Whereas, Pacific States Savings & Loan Company has prosecuted its appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the decree made and entered in the above-entitled cause by the United States District Court for the District of Nevada, on April 6, 1938;

Now, Therefore, the condition of this obligation is such, that if the said appellant shall prosecute its appeal to effect, and answer all costs if it fails to make good its plea, then this obligation to be void, otherwise to remain in full force and virtue.

The said Pacific Indemnity Company, a corporation, agrees that in case of breach of any condition hereof, the said District Court of the United States may, upon notice to it of not less than ten days, proceed summarily in the above suit to ascertain the amount which it is bound to pay on account of such breach and render judgment against it, and award execution thereon.

In Witness Whereof, the corporate seal and name of said Pacific Indemnity Company is hereto affixed

and attested by its duly authorized officers, this 22nd day of August, 1938.

PACIFIC INDEMNITY COMPANY
By W. F. AMES, JR.

Attorney-in-Fact.

The foregoing undertaking is hereby approved as to form, amount and sufficiency.

Dated: August 22, 1938.

FRANK H. NORCROSS

District Judge. [77]

Receipt of a copy of the within Undertaking on Appeal is hereby admitted this.....day of August, 1938.

.....
Attorneys for Defendant-Appellee.

[Endorsed]: Filed Aug. 22, 1938. [78]

[Title of District Court and Cause.]

ORDER ENLARGING TIME TO PREPARE
TRANSCRIPT OF RECORD AND TO DOCKET
APPEAL.

Good cause appearing therefor, It Is Hereby Ordered that the time within which to prepare the transcript of record on appeal and to docket the appeal of the plaintiff in the above entitled suit in the United States Circuit Court of Appeals for the

Ninth Circuit be and the same is hereby enlarged to and including the 1st day of November, 1938.

Dated: September 7th, 1938.

FRANK H. NORCROSS

Judge of the United States
District Court.

[Endorsed]: Filed Sept. 7, 1938. [79]

[Title of District Court and Cause.]

STATEMENT OF EVIDENCE.

The above-entitled cause came on regularly for trial before the Court on the 18th and 19th days of January, 1937, Messrs. M. E. Harrison and A. M. Dreyer, of Brobeck, Phleger & Harrison, San Francisco, California, and N. J. Barry, of Reno, Nevada, appearing as attorneys for plaintiff, [80] and Samuel Platt, Esq., of Messrs. Platt & Sinai, Reno, Nevada, appearing as attorney for defendant.

Thereupon witnesses were called by the respective parties, duly sworn and testified as hereinafter set forth, and exhibits were introduced by the respective parties, and the cause was submitted for decision.

At the commencement of the trial leave was granted by the Court to file the Supplemental Bill of Complaint hereinbefore set forth, and Pacific States Savings & Loan Company, a corporation, was substituted as plaintiff in the place and stead

of Reconstruction Finance Corporation, a corporation. It was thereupon stipulated that that portion of Paragraph V of said Supplemental Bill of Complaint which alleges that pursuant to the decree of foreclosure and sale in said paragraph referred to the stocks which are the subject matter of this action were sold by a master appointed for that purpose in said decree of foreclosure and thereafter in turn conveyed to the substituted complainant, should be deemed controverted.

The evidence adduced in said cause, condensed and reduced to narrative form, is as follows:

PLAINTIFF'S EXHIBIT NO. 1

is a deed dated June 9, 1930, from John G. Taylor, of Lovelock, Nevada, to John G. Taylor, Inc., a Wyoming corporation, duly executed, acknowledged and recorded, by which said John G. [81] Taylor did grant, bargain, sell and convey to John G. Taylor, Inc., "all property, real, personal and mixed, now owned by me and located in the State of Nevada, save and except such property as is now standing in my name and which is located within the corporate limits of the City of Lovelock, County of Pershing, State of Nevada. Together with the appurtenances and all rents, issues and profits thereof; also all water rights, ditches and canals appurtenant to said land or used in connection therewith, and all shares of stock of any water corporation appurtenant to said land, or the waters from which are used or have been used in connection with the irrigation or cultivation thereof.

It was alleged in the Bill of Complaint, and admitted by the Answer, that none of the lands or water rights involved in this cause were or are located in the City of Lovelock.

PLAINTIFF'S EXHIBIT NO. 2

is a mortgage dated March 12, 1932, executed on April 20, 1932, duly acknowledged and recorded, between John G. Taylor, Inc., a Wyoming corporation, and The Reno National Bank, a corporation organized under the laws of the United States, by which, to secure an indebtedness of \$700,000, evidenced by a promissory note dated March 12, 1932, made by said mortgagor and payable to said mortgagee, the mortgagor did mortgage to the mortgagee certain lands and premises in the Counties of Pershing, Humboldt and Elko, State of Nevada, therein specifically described, including the lands described in [82] the Bill of Complaint herein,

“Together With all water, water rights, water applications and water permits, or privileges, connected with, belonging, appurtenant or incident to the lands hereby conveyed, or used in connection with all or any part of the said premises, or used or usable in connection therewith, and all dams, reservoirs and ditches, canals or other works for storage or carrying of water now owned by the mortgagor, or in which it now has, or may hereafter acquire any interest, and all applications now pending in the office of the State Engineer of the State of Nevada, for any and all waters to be used upon

any part or portion of the said lands, or used in connection therewith.

“Together With all and singular the tenements, hereditaments and appurtenances thereunto belonging, and in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.”

No affidavit setting forth that said mortgage was made in good faith and without any design to hinder, delay or defraud creditors was appended or annexed to said mortgage.

PLAINTIFF'S EXHIBIT NO. 3

is a chattel mortgage dated March 12, 1932, duly executed, acknowledged and recorded, from said John G. Taylor, Inc. to The Reno National Bank as further security for the indebtedness and promissory note secured by the mortgage introduced as Exhibit No. 2, mortgaging certain described livestock, machinery, tools, and merchandise upon the lands described in said real property mortgage and the crops growing or to be grown thereon. Said chattel mortgage did not describe [83] therein any of the stock referred to in the Bill of Complaint.

By instruments dated, respectively, March 25, 1932 and April 23, 1932, duly executed, acknowledged and delivered by The Reno National Bank, said The Reno National Bank assigned to Reconstruction Finance Corporation the note and mortgages hereinabove described, and said assignments

were duly introduced in evidence as Plaintiff's Exhibits Nos. 4 and 5.

PLAINTIFF'S EXHIBIT NO. 6

is a certified copy of the Amended Articles of Incorporation of Humboldt Lovelock Irrigation Light & Power Company, duly executed on June 16, 1909, and acknowledged and filed as required by law, which Amended Articles of Incorporation provide:

“Know All Men By These Presents that we, the undersigned, citizens of the United States of America, desire to form a corporation under and by virtue of the laws of the State of Nevada, and do hereby associate ourselves together into a body corporate and politic, and to become incorporated for the transmission of the lawful business hereinafter set forth, and do hereby make, execute, acknowledge, sign and adopt, in duplicate, the following Articles of Incorporation, to wit:

“First: The corporate name of our said corpora- [84] tion is Humboldt Lovelock Irrigation Light & Power Company.

“Second: The object for which our said corporation is formed and incorporated is:

“1. To engage in the business of furnishing water for domestic and stock purposes and for the irrigation of lands; and the stockholders of our said corporation shall always be entitled, by virtue of being such stockholders, to a preferential use, over all other persons, natural or

artificial, of all water owned or possessed by our said corporation for the irrigation of lands owned or possessed by such stockholders; all water of our said corporation available for such irrigation purposes to be divided each season among the stockholders according to the respective rights of such stockholders, as hereinafter more fully stated; all water of our said corporation remaining after supplying the demand of the stockholders may be disposed of to other parties desiring the same.

“To acquire by purchase, grant, gift, devise, conveyance, condemnation, construction, location, appropriation, lease, sublease, mortgage, option, bond, assignment, transfer, agreement or otherwise, and to own, hold, store, impound, occupy, construct, develop, operate, maintain, make and generate electricity, for power, light and heat, use, and to furnish, sell, dispose of grant, bond, assign, exchange, lease, sub-lease, mortgage, pledge, or otherwise dispose of, in any lawful way or manner for money, labor, services or property, real, personal or mixed—

[85]

“a. Land, any and all interests in land, buildings, reservoirs, dams, headgates, canals, ditches, flumes, pipe lines, machinery, apparatus, power plants, power, electricity, transmission lines for transmitting electricity or electrical energy for light, heat and power, water power, water, water rights, and any and all

rights to the use of water, leases, sub-leases, contracts, franchises, stock of this or other corporations, privileges, money, securities, licenses, contracts or options for the securing or disposing of any and all of the property, rights or privileges, or any interest therein, above enumerated;

“b. Any and all real, personal or mixed property whatever, and any and all interests therein, which may be necessary or incidental to enable our said corporation to carry on its operations named in these Amended Articles.

“2. To pay cash or issue full paid assessable stock in the payment for any and all property of whatsoever nature or kind authorized to be acquired, created, stored, bounded, held, developed, used and operated by our said corporation.

“3. To otherwise do and transact any and all business and to do any and all things with any and all property it may acquire or control as it sees fit; and to do any and all other lawful things in connection with and necessary or incidental to enable our said corporation to carry on its operations as named in these Amended Articles.

“Third: The capital stock of our said corporation shall be One Hundred and Forty-five Thousand Nine Hundred and [86] fifty-three (\$145,953.00) Dollars, and shall be divided into One Hundred and Forty-five Thousand Nine

Hundred and fifty-three (145,953) shares of the par value of One (\$1.00) Dollar each, and said stock shall be full paid and assessable and shall be divided into two classes to be designated as Class A stock and Class B stock; ownership of stock of either Class shall entitle the holder thereof to receive water for irrigation purposes from said Company according to the respective rights of such stockholders; Class A stock shall have certain preferential rights over Class B stock, to wit: Class A stock shall be entitled to the preferential use of water from the Company of a maximum quantity of 10,000 acre feet each year, to be distributed pro rata if requested, for the irrigation of lands owned or irrigated by such stockholder, lying under or irrigated by means of water used through either the Irish American or Last Chance, Old Channel, Young or South West Ditch or ditches, situated in Lovelock Valley, Nevada; that such preferential use shall be expressly limited to such lands lying under said named ditches, and upon Class A stock being transferred to a transferee not a holder of Class A stock and not entitled to exercise such preferential use, Class B stock shall be issued to such transferee in lieu of the Class A stock so transferred; that, subject to such preferential right of Class A stock, Class A stock and Class B stock shall be entitled and shall have the same rights to the use of water from the Company each year,

to be distributed [87] pro rata if requested, for the irrigation of lands owned or irrigated by such stockholder lying under or irrigated by means of water used through any ditch or ditch system in Lovelock Valley, Nevada; that the price to be charged any stockholder of Class A stock or Class B Stock for water furnished for irrigation purposes shall not exceed seventy-five cents per acre foot per season; and this limitation of a maximum charge shall not be increased by any amendment of these Articles, or in any way or manner whatsoever; provided, however, that the limitation of said maximum charge of seventy-five cents per acre foot per season shall not apply to any water, in excess of the pro rata share, received by any stockholder from the Company. The price to be charged any stockholder of any class of stock for water for irrigation purposes shall be fixed by the Board of Directors, subject to the limitations above designated, each season; that the total authorized issue of Class A stock shall be limited to and shall not exceed One Hundred Twenty Thousand Nine Hundred Fifty-three (120,953) shares, and the total authorized aggregate issue of Class A stock and Class B stock shall be limited to and shall not exceed One Hundred Forty-five Thousand Nine Hundred Fifty-three (145,953) shares.

“The original amount of subscribed capital stock with which it commenced business was

Two Thousand (\$2,000) Dollars, the original amount actually subscribed was Two Thousand (\$2000) Dollars, and the original amount actually [88] subscribed was Two Thousand (\$2000) Dollars, and the original amount actually paid up was One Thousand (\$1000) Dollars. Under this amendment all stock now outstanding and amounting to One Hundred Forty-five Thousand Nine Hundred Fifty-three (145,953) shares, of the par value of \$1.00 per share fully paid and assessable, shall be surrendered and cancelled, and for each share of stock so surrendered for cancellation there shall be issued and delivered one share of Class A stock to every stockholder except Lovelock Land & Development Company, and to said Lovelock Land & Development Company for each of the twenty-five thousand (25,000) shares held by it so surrendered for cancellation, there shall be issued and delivered one share of Class B stock.

“Fourth: The term of existence of our said corporation shall be unlimited.

“Fifth: The affairs and management of our said corporation are to be under the control of a Board of Directors, said Board of Directors to consist of five persons.

“Sixth: The Board of Directors of our said corporation shall have power to do and perform all acts not in conflict with the laws of the State of Nevada, which our said corporation has power to do under and by virtue of these

Amended Articles of Incorporation and the laws of the State of Nevada, and shall have power to authorize the President and Secretary of the corporation to make, execute, acknowledge and deliver all documents of whatsoever kind or nature, with [89] the seal of the corporation affixed thereto, for the purpose of carrying into effect all the powers and privileges of the corporation as aforesaid. Said Board of Directors shall likewise have power to make and adopt from time to time such prudential by-laws as they may deem proper for the management and disposition of the stock and business affairs of this corporation, not inconsistent with the laws of this State and the provisions of these Amended Articles of Incorporation, and prescribing the duties of officers, artificers and servants that may be employed, for the appointment of all officers, and for carrying on all kinds of business within the objects and purposes of this corporation; and to fill vacancies which may exist in said Board of Directors by reason of the death, resignation or other incapacity of any director to serve; said appointee or appointees to hold office until the next election of directors.

“Seventh: The principal place or office of business of our said corporation, within the State of Nevada, shall be located in Lovelock Mercantile Company’s building on the southwest corner of Fourth and C Streets in the

Town of Lovelock, County of Humboldt, State of Nevada.

“Our said corporation assumes to itself and shall and does possess all the rights, powers, privileges and franchises granted or conferred upon corporations by the laws of the State of Nevada, except as hereinabove limited.”

PLAINTIFF'S EXHIBIT NO. 7

is a certified copy of the Articles of Incorporation of Young Ditch Company, duly executed on August 14, 1915, and [90] acknowledged and filed as required by law, which Articles of Incorporation provide:

“For the purpose of forming a corporation under the laws of the State of Nevada, the undersigned, whose names appear in full herein, hereby certify and agree as follows:

“Article I. The name of this corporation is Young Ditch Company.

“Article II. The location of the principal place of business of the corporation in the State of Nevada, is at the office of John G. Taylor, at the Town of Lovelock, County of Humboldt, State of Nevada, and all regular meeting of the Stockholders, and all regular meetings of the Directors, must be held at such office, but the by-laws may provide, for the establishment of branch offices elsewhere either in, or outside of the State of Nevada, and provide for the holding of special meeting of the Directors, or ad-

journed sessions of regular meetings at any such office.

“Article III. The period of existence of this corporation is unlimited.

“Article IV. In furtherance, and not in limitation of the powers now, or hereafter conferred upon corporations by the laws of the State of Nevada, or any other State or Territory in which the corporation may do business, the corporation shall generally have the following powers, and is incorporated for the following general purposes.

“(1) To acquire by, purchase, or otherwise, to sell, lease, contract, exchange, or in any manner secure lands for dam, ditch and reservoir site, together with rights of way and easements, and in any lawful manner dispose of the same in whole or in part.

“(2) To acquire, own and in any lawful manner dispose of water rights and privileges, of any and every kind, and while the owner, or entitled to the possession of any such rights, to in any lawful manner control or handle the same.

“(3) To issue, sell, or otherwise dispose of bonds, debentures, promissory notes and other evidences of indebtedness necessary to raise money to conduct the business of the corporation; and to secure the payment of any such obligations, by properly executed mortgages, deeds of trust, or other instruments in writing necessary and proper for that purpose.

“(4) To enter into, make and perform contracts of any kind, with any person, firm, corporation or association, county, city, state, territory, or government as fully to all intents and purposes as natural persons might or could do.

“(5) Generally without limitation or restriction, to do any or all things herein set forth, to the same extent as natural persons might or could do, as principal, agent, or contractor or otherwise, with all the powers conferred by, or not in conflict with the laws of the State of Nevada, or any other place where the corporation may do business.

“Article V. The authorized capital stock of the Corporation is Sixty Thousand (\$60,000) Dollars, divided into 6,000 shares, of the par value of Ten (\$10.) Dollars each, and the amount of subscribed stock with which it will commence business is Three Thousand (\$3,000) Dollars. [92]

“Article VI. The names of the original subscribers, the incorporators of this company, together with the number of shares subscribed by them respectively, are as follows:

John G. Taylor	100 shares
John Holmstrom	100 “
H. P. Kruse	100 “
Unsubscribed	5700 “
	<hr/>
Total	6,000 “

“The Board of Directors shall have power to accept payments, at par, for any of the capital stock of the corporation, in money or property sold, to the corporation, taken at the fair cash value thereof, and any such stock, so issued, shall be fully paid, and so issued, but shall nevertheless be subject to assessment as herein provided. In the absence of actual fraud, the judgment of the Board of Directors as to the value of any such property shall be conclusive.

“Article VII. The members of the governing Board shall be styled Directors, and shall be five in number. They shall be elected in the manner, and for the term prescribed by the by-laws and the Statutes of Nevada. All other officers shall be chosen by the Board of Directors in the manner prescribed by the bylaws.

“Article VIII. The stockholders shall have power to enact any and all by-laws necessary for the government of the corporation, or the conduct of the business of the corporation, not inconsistent with these Articles of Incorporation, or with the laws of the State of Nevada, or the United States, and to amend or repeal the same at pleasure. [93]

“Article IX. The capital stock of this corporation shall be subject to assessment, and sale for nonpayment thereof, for the purposes of paying the debts of, or purchasing property for the corporation, in manner and form and

to the extent prescribed by the by-laws and the laws of the State of Nevada.

“Article X. The private property of the stockholders or incorporators and stockholders shall not be liable for the debts of the corporation.”

PLAINTIFF'S EXHIBIT NO. 8,

is a certified copy of the Articles of Incorporation of Old Channel Ditch Company, duly executed on November 23, 1929, and acknowledged and filed as required by law, which Articles of Incorporation provide:

“Know All Men By These Presents: That we, the undersigned, who are citizens of the State of Nevada, have this day voluntarily associated ourselves together for the purpose of forming a corporation under the laws of the State of Nevada—and we hereby certify:—

“First: That the name of the said corporation shall be the ‘Old Channel Ditch Company.’

“Second: That the purpose and object for which this Company is formed is to purchase, acquire, sell, convey, lease, mortgage and generally deal and operate in land, premises, water and water rights, to build, *construct* and maintain Dams, Reservoirs, Ditches, Flumes and *Acqueducts*, for the storing, carrying and conducting of water for irrigation and other purposes: to sell and lease water and the [94] use thereof for such purposes, and generally to deal and operate in land, premises, water and water

rights, and the acquiring and disposal of the same, and the use thereof for irrigation and other purposes:—

“Third: That the place where the principle business of said corporation is to be transacted is in the town of Lovelock, Humboldt County, State of Nevada:

“Fourth: That the term for which said Corporation is to exist is Forty (40-years from and after the date of this Incorporation:

“Fifth: That the number of Trustees of said Corporation shall be Seven (7), and that the names and residences of the Trustees who shall manage the affairs of the Corporation for the first six months and shall serve until the election and qualification of their successors in said office are as follows to wit:

Name	Office	Residence
W. C. Pitt	President	Lovelock, Nevada,
John G. Taylor	Vice-President	Lovelock, Nevada,
B. F. Lynip	Secretary	Lovelock, Nevada,
Hans C. Damm	Treasurer	Lovelock, Nevada,
Hiram Stoker	Trustee	Lovelock, Nevada,
George Pitt	Trustee	Lovelock, Nevada,
J. T. Hauskins	Trustee	Lovelock, Nevada.”

PLAINTIFF'S EXHIBIT NO. 9

is a certified copy of the Articles of Incorporation of Union Canal Ditch Company, duly executed on September 21, 1910, and acknowledged and filed as

required by law, which Articles of Incorporation provide: [95]

“For the purpose of forming a corporation under the laws of the State of Nevada, the undersigned, whose names appear in full herein, hereby certify and agree as follows:

“Article I. The name of this corporation is Union Canal Ditch Company.

“Article II. The location of the principal place of business of the corporation in the State of Nevada, is at the office of the First National Bank, at the Town of Lovelock, County of Humboldt, State of Nevada, and all regular meeting of the stockholders, and all regular meetings of the Directors, must be held at such office, but the by-laws may provide, for the establishment of branch offices elsewhere either in, or outside the State of Nevada, and provide for the holding of special meeting *odf* the directors, or adjourned sessions of regular meetings at any such office.

“Article III. The period of existence of this corporation is unlimited.

“Article IV. In furtherance, and not in limitation of the powers now, or hereafter conferred upon corporations by the laws of the State of Nevada, or any other State or Territory in which the corporation may do business, the corporation shall generally have the following powers, and is incorporated for the following general purposes.

“(1) To acquire by purchase, or otherwise, to sell, lease, contract, exchange, or in any manner secure lands for dam, ditch and reservoir sites, together with rights of way and easements, and in any lawful manner dispose of the same in [96] whole or in part.

“(2) To acquire, own and in any lawful manner dispose of water rights and privileges, of any and every kind, and while the owner, or entitled to the possession of any such rights, to in any lawful manner control or handle the same.

“(3) To issue, sell, or otherwise dispose of bonds, debentures, promissory notes and other evidences of *indebtednaess* necessary to raise money to conduct the business of the corporation; and to secure the payment of any such obligations, by properly executed mortgages, deeds of trust, or other instruments in writing necessary and proper for that purpose.

“(4) To enter into, make and perform contracts of any kind, with any person, firm, corporation or association, county, city, state, territory, or government as fully to all intents and purposes as natural persons might or could do.

“(5) Generally without limitation or restriction, to do any or all things herein set forth, to the same extent as natural persons might or could do, as principal, agent, or contractor or

otherwise, with all the powers conferred by, or not in conflict with the laws of the State of Nevada, or any other place where the corporation may do business.

“Article V. The authorized capital stock of the corporation is Eighty Thousand (\$80,000.) Dollars, divided into 8,000 shares, of the face or par value of Ten (\$10.) Dollars each, and the amount of subscribed stock with which it will commence business is Five Thousand (\$5000) Dollars. [97]

“Article VI. The names of the original subscribers, the incorporators of this company, together with the number of shares subscribed by them respectively, are as follows:

Peter Anker.....	100 shares
Andrew Westfall.....	100 “
Hans Jensen.....	100 “
Ingvert Hanson.....	100 “
Conrad Mortensen.....	100 “
Unsubscribed	7500 “
	—
Total	8000 “

“The board of directors shall have power to accept payment, at par, for any of the capital stock of the corporation, in money paid or property sold, to the corporation, taken at the fair value thereof, and any such stock, so issued, shall be fully paid, and so issued, but shall

nevertheless be subject to assessment as herein provided. In the absence of actual fraud, the judgment of the board of directors as to the value of any such property shall be conclusive.

“Article VII. The members of the governing board shall be styled directors, and shall be five in number. They shall be elected in the manner, and for the term prescribed by the by-laws and the Statutes of Nevada. All other officers shall be chosen by the board of directors in the manner prescribed by the by-laws.

“Article VIII. The stockholders shall have power to enact any and all by-laws necessary for the government of the corporation, or the conduct of the business of the corporation, not inconsistent with these articles of incorporation, or with the laws of the State of Nevada, or the United States, and to amend or repeal the same at pleasure. [98]

“Article IX. The capital stock of this corporation shall be subject to assessment, and sale for nonpayment thereof, for the purpose of paying the debts of, or purchasing property for the corporation, in manner and form, and to the extent prescribed by the by-laws and the laws of the State of Nevada.

“Article X. The private property of the stockholders or incorporators and stockholders shall not be liable for the debts of the corporation.” [99]

PLAINTIFF'S EXHIBIT 10

is a certified copy of a decree dated October 20, 1931, rendered by the Sixth Judicial District Court of the State of Nevada, in and for the County of Humboldt, in Case No. 2804, entitled "In the Matter of the Determination of the Relative Rights of Claimants and Appropriators of the Waters of the Humboldt River Stream System and Its Tributaries," wherein the rights of claimants or appropriators of the waters of the Humboldt River Stream System were determined by said court, which decree, so far as here involved, determines:

"That the names of claimants or appropriators or successors of the waters of the Humboldt River stream system and its tributaries diverting waters from said Humboldt River stream system for beneficial use, the source of water supply, the means by which the water is secured from the source and applied to beneficial use, the year of priority, the cultured acreage of harvest crop, meadow pasture and diversified pasture, the legal subdivisions, section, township and range, length of season and duty of water for each of said claimants or appropriators is hereby adjudged and decreed as follows, to wit:" (Here are listed the respective priorities and rights of the various parties, including certain rights and priorities appurtenant to the lands described in the complaint herein, of which the following is typical but not exclusive: [100])

Pri- ority	Culture Acres			Location			Duty of Water			
	Har- vest	Mea- dow Pas- ture	Diver- sified Pas- ture	Subdi- vision	Sec.	Tp.	R.	Length of Sea- son	C.F.S.	Acro Feet
Claimant—JOHN G. TAYLOR										
Source—Humboldt River.										
Ditch—Old Channel in conjunction with Young Ditch.										
1888*	20.00	.....	.....	N½	3	27	31	3-15- 9-15	.163	60.00
1888*	60.00	.....	.....	N½	3	27	31	3-15- 9-15	.488	180.00
1888*	190.00	.....	.....	S½	3	27	31	3-15- 9-15	1.545	570.00
1888*	66.10	.....	.....	N½	3	27	31	3-15- 9-15	.537	198.30
1888*	388.75	.....	.....		10	27	31	3-15- 9-15	3.159	1166.25
*As of May.										
Source—Humboldt River.										
Ditch—Irish-American, in conjunction with Union Canal.										
1887	136.05	.....	.....	SW¼	22	27	31	3-15- 9-15	1.106	408.15)

Neither the Humboldt Lovelock Irrigation Light & Power Company, Young Ditch Company, Union Canal Ditch Company, nor Old Channel Ditch Company are by said decree found or determined to have rights in or to the waters of said Humboldt River stream system, except that Union Canal Ditch Company was found to have certain rights in respect of lands not here involved, which rights are those referred to in the testimony of A. Jahn.

Said decree further provides: [101]

“It Is Further Ordered, Adjudged and Decreed that except such persons as may have acquired rights to the use of the water of Humboldt River stream system and its tributaries

granted under applications to the State Engineer under and by virtue of the provisions of the statute, no person other than the parties named herein have or claim any interest in or to said water or in or to the use of said water or any part thereof.

“That the order of the rights of the respective appropriators of the waters of said stream and its tributaries, and in which order they are entitled to divert and use the said water, shall be and is according to the date of the relative priority of the right as herein set forth and determined, and the first in order of time according to the date of relative priority shall be and is the first in order of right, and so on, down to the date of the latest priority, and those having prior rights are entitled to divert and use the waters of said stream and its tributaries when necessary for the beneficial use in connection with the irrigation of their respective lands, or other useful and beneficial purposes for which they are decreed a right of use, at all times and against those having subsequent rights, without let or hindrance, and whenever the water is not required by the appropriator having a prior right to its use for the purpose for which said water was appropriated, he must and shall permit it to flow down in the natural channel of the stream as it was wont to flow in its natural course, without hindrance or diversion thereof, and those having subsequent rights

are entitled to the use of such water and to divert the same to [102] the extent of their rights of appropriations, according to the order of their priority rights; and at all times the waters diverted shall be beneficially, economically and reasonably used without waste by those having a right to do so by reason of the priority of their rights.

“That the rights of appropriation hereby confirmed are appurtenant to the lands herein described for irrigation purposes, and the right of use of the waters of said stream and its tributaries by virtue of such rights of appropriation are limited and confined to the irrigation of the lands described herein to the extent of said lands as herein set forth, and the priorities herein confirmed confer no right of use of the waters of said stream, and its tributaries, on the lands other than those specified tracts to which such rights of appropriation are herein set forth as appurtenant. The right of a water user to change the place of use of a vested water right, in the manner, now or hereafter, provided or permitted by law shall not be prohibited or affected by this decree.” [103]

WILLIAM WOODBURN,

a witness called on behalf of plaintiff, testified:

I am an attorney at law, and in 1932 represented The Reno National Bank in connection with a mort-

(Testimony of William Woodburn.)

gage taken by that bank from John G. Taylor, Inc. I was also at that time a director of the bank.

Prior to the execution of the mortgage I had a conversation with Mr. Taylor, president of John G. Taylor, Inc., at which Mr. Randolph, secretary of that company, was also present. It was made plain to Mr. Taylor, and he expressed himself as agreeable, that all property of every kind, nature and description owned by John G. Taylor, Inc. was intended to be given to the bank as security for the note secured by said mortgage. I do not recall whether anything was specifically said about the water rights incident to or appurtenant to the lands. I was familiar in a general way with the property owned by Mr. Taylor and knew that it was irrigated. It was the intention of both parties to the transaction that everything that John G. Taylor, Inc. owned was intended to go as security for the note.

ALLARD A. CALKINS,

a witness called on behalf of plaintiff, testified:

I am Manager of the San Francisco Loan Agency of Reconstruction Finance Corporation, and have been since [104] June 1, 1932. I was Assistant Manager from the opening of that agency from about February 8, 1932, until I became Manager. I had charge of the transactions with The Reno

(Testimony of Allard A. Calkins.)

National Bank at all times, both before and after becoming Manager.

I am familiar with the \$700,000 note of John G. Taylor, Inc. to The Reno National Bank and the mortgages securing the same. The Reconstruction Finance Corporation advanced to The Reno National Bank \$1,120,000 on April 26 and April 27, 1932, secured in part by assignment of the John G. Taylor, Inc. note and mortgages. Prior to such advances being made I had discussions with Mr. Sheehan, vice-president of The Reno National Bank, with respect of the properties covered by said mortgages. These transactions occurred between February 10 and March 4, 1932. I was told by Mr. Sheehan that all the property belonging to John G. Taylor, Inc. was covered by said mortgages. I also received a copy of a statement as of December 31, 1931, of John G. Taylor, Inc., certified by Mr. Wilcox, of The Reno National Bank, which statement lists, among other properties, 3,000 acres of land at Lovelock, Pershing County, Nevada, valued at \$50 per acre, and contains the statement with reference thereto that "Each of these ranches are equipped with good dwellings, bunk houses, barns, sheds, corrals, blacksmith shops and plenty of water."

The subject of these properties was discussed in considerable detail, as there was not time for the [105] Reconstruction Finance Corporation to have an appraisal of the property made. The Lovelock

(Testimony of Allard A. Calkins.)

properties were pointed out as the most desirable properties held by John G. Taylor, Inc. largely because of the quantity of hay and grain raised thereon, their use as winter feeding ground, particularly for sheep, and there were detailed statements as to water, volunteered by Mr. Sheehan or made in response to my questions.

No mention was made in these discussions of any stock of any companies, but the Lovelock properties were named as being of particular value because of the water they had, and the source of water was named as the reservoir built by Mr. Pitt and Mr. Taylor, and of which Mr. Taylor owned the major part. The land would always be fully watered, and that fact was stressed because we knew the land without the water was worth nothing. On behalf of Reconstruction Finance Corporation I would not have approved the loan if I had believed that no water rights went with the land.

No mention of any water stocks was made in any of my discussions with Mr. Sheehan, and I made no request for hypothecation of any shares of any stocks. Mr. Sheehan made no such demand or request in my presence. I did not demand any such pledge because I didn't know of the existence of such stocks and had never heard of those companies, but I had heard of the water rights. [106]

Prior to disbursement by Reconstruction Finance Corporation of the moneys referred to no investi-

(Testimony of Allard A. Calkins.)

gation had been made as to whether John G. Taylor was the owner of stocks in any of the water companies here involved. I did not know of the organization of such water companies and was not told of their existence by Mr. Sheehan. I first heard of their existence late in 1933, or early in 1934, in connection with other litigation instituted by the Receiver of the Bank of Nevada Savings & Trust Company approximately one year after acceptance of the assignment of the mortgages of John G. Taylor, Inc. If I had known of the existence of the water companies I would have insisted on hypothecation of their shares in order to preclude any doubts and because we felt that we ought to have everything and every scrap of paper owned by John G. Taylor affecting the land, without evaluating it.

JOHN V. MUELLER,

a witness called on behalf of plaintiff, testified:

I reside at Reno, Nevada, and am an engineer by profession. I am familiar with lands in Lovelock Valley, and particularly those which belong to John G. Taylor and John G. Taylor, Inc., described in the complaint herein and in the deeds and mortgages in evidence herein (Exhibits 1 and 2). Those lands are to some extent irrigated, the source being the Humboldt River. Those lands are irrigated through the Irish American, the South West, Young, and Old [107] Channel ditches.

(Testimony of John V. Mueller.)

The lands referred to are also described in Certificates 2130 and 2131 issued by the State Engineer of Nevada September 18, 1935, for the appropriation of water, certified copies of which certificates were introduced in evidence as Plaintiff's Exhibits 11 and 12, and which respectively read as follows:

PLAINTIFF'S EXHIBIT NO. 11

“Application No. 1098 Certificate Record
No. 2130 Book 7 Page 2130
The State of Nevada
Certificate of Appropriation of Water

“Whereas, W. C. Pitt for H. L. I. L. & P. Company has presented to the State Engineer of the State of Nevada. Proof of Application of Water to Beneficial Use, from Humboldt River through H. L. I. L. & P. Co. canal and Reservoirs No's 1 & 2 for Irrigation stock-watering and domestic purposes. The point of diversion of water from the source is as follows: Approximately the center of the NW¹/₄ of Section 29, T. 33 N., R. 35 E., M. D. B. & M. situated in Pershing County, State of Nevada.

“Now Know Ye, That the State Engineer, under the provisions of Section 29, Chapter 18, Statutes of 1907 has determined the date, source, purpose and amount of such appropriation, together with the place to which such water is appurtenant, as follows:

(Testimony of John V. Mueller.)

Name of appropriator—Humboldt-Lovelock Irrigation, Light & Power Co.

Post-office address—Lovelock, Nevada.

Amount of appropriation—^{oo} 300 c.f.s. or 20,200 acre feet per annum of flood waters.

Period of use, from March 15th to September 15th of each year. [108]

“Date of priority of appropriation, August 21, 1908.

Description of works of diversion and storage: Water is diverted by means of concrete dam and headgates and conveyed through 12½ miles of feeder canal to Reservoir No. 1 with capacity of 17,700 acre feet and Reservoir No. 2 with a capacity of 2500 acre feet. Water from the reservoirs is released through control gates at the reservoirs into the main channel of the Humboldt River and used for irrigation through the Young, Old Channel, Lovelock Land and Development Co., Irish-American and South West ditches.

^{oo} The stored waters as granted by this certificate are to be used only to supply any deficiency in the irrigation of vested rights lands herein listed as irrigated by direct diversion from the Humboldt River and in no event shall such combined use exceed any duty of water decreed to such lands.

(See attached supplemental sheet for description of land to which water is appurtenant.)

(Testimony of John V. Mueller.)

“The right to water hereby determined is limited to the amount which can be beneficially used, not to exceed the amount above specified, and the use is restricted to the place where acquired and to the purpose for which acquired.

In Testimony Whereof, I Alfred Merritt Smith, State Engineer of Nevada, have hereunto set my hand and the seal of my office, this 18th day of September, A. D. 1935.

Recorded Sept. 21, 1935, Bk. #1. Page 26.

Pershing County Records.

[Seal] ALFRED MERRITT SMITH
State Engineer.” [109]

(Supplemental sheet attached to
Certificate No. 2130)

“Description of vested right lands to which water through Old Channel Dam and Ditch System is appurtenant:

Portions of Sections 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, and 27 of T. 27 N., R. 31 E., M. D. B. & M., and Section 18, T. 27 N., R. 32 E., M. D. B. & M.

“Description of vested right lands to which water through Young Ditch System is appurtenant:

Portions of Sections 1, 2, 3, 4, 10, 11, 12, of T. 27 N., R. 31 E., M. D. B. & M.; Section 34, T. 28 N., R. 31 E., M. D. B. & M.; Sections 6 and 7, T. 27 N., R. 32 E., M. D. B. & M.; and Sections 30 and 31 of T. 28 N., R. 32 E., M. D. B. & M.

(Testimony of John V. Mueller.)

“Description of vested right lands to which water through the Southwest Ditch is appurtenant:

Portions of Sections 27 and 28 of T. 27 N., R. 31 E., M. D. B. & M.

“Description of vested right lands to which water through Irish-American Ditch is appurtenant:

Portions of Sections 21, 22, 27, 28, 29, 30 and 31 of T. 27 N., R. 31 E., M. D. B. & M.; and Section 6 of T. 26 N., R. 31 E., M. D. B. & M.

“Description of vested right lands to which water through Lovelock Land and Development Company’s Ditch System is appurtenant:

Portions of Sections 7, 8, and 16, T. 25 N., R. 31 E., M. D. B. & M.; and Section 12, T. 25 N., R. 30 E., M. D. B. & M.”

PLAINTIFF’S EXHIBIT NO. 12

“Application No. 1948 Certificate Record

No. 2131 Book 7 Page 2131

The State of Nevada

Certificate of Appropriation of Water

“Whereas, Geo. C. Stoker, Pres., H. L. I. L. & P. Co. has [110] “presented to the State Engineer of the State of Nevada Proof of Application of Water to Beneficial Use, from Humboldt River through H. L. I. L. & P. Co.

(Testimony of John V. Mueller.)

canal and reservoirs No's 1 & 2 for Irrigation purposes. The point of diversion of water from the source is as follows: Approximately the center of the NW $\frac{1}{4}$ of Section 29, T. 33 N., R. 35 E., M. D. B. & M. situated in Pershing County, State of Nevada.

“Now Know Ye, That the State Engineer, under the provisions of Section 29, Chapter 18, Statutes of 1907 has determined the date, source, purpose and amount of such appropriation, together with the place to which such water is appurtenant, as follows:

Name of appropriator—Humboldt-Lovelock Irrigation, Light & Power Co.

Post-office address—Lovelock, Nevada.

Amount of appropriation— $^{\circ}$ 450 c.f.s. or 29,570 acre feet per annum of flood waters.

Period of use, from March 15th to September 15th of each year.

Date of priority of appropriation—February 10, 1911.

“Description of $^{\circ}$ Note: This certificate covers additional and supplementary rights to storage of flood and unappropriated waters of the Humboldt River to those storage rights granted under Certificate No. 2130 issued under permit No. 1098. This additional storage has been created by enlargement of feeder canal and by raising levees of reservoirs No's 1 & 2 so as to provide maximum storage capacities

(Testimony of John V. Mueller.)

of 28,970 acre feet and 20,800 acre feet respectively for said reservoirs. The stored waters under this certificate are to be used only [111] to supply any deficiency in the existing water rights on lands irrigated by direct diversion from the Humboldt River as described on supplemental sheet and in no event shall such combined use exceed the duty specified for such lands:

(See supplemental sheets for description of land to which water is appurtenant.)

“The right to water hereby determined is limited to the amount which can be beneficially used, not to exceed the amount above specified, and the use is restricted to the place where acquired and to the purpose for which acquired.

“In Testimony Whereof, I Alfred Merritt Smith, State Engineer of Nevada, have hereunto set my hand and the seal of my office, this 18th day of September, A. D. 1935.

[Seal] ALFRED MERRITT SMITH
State Engineer.”

“Recorded Sept. 21, 1935, Bk. #1, Page 78.
Pershing County Records. Water Certificates.

(Testimony of John V. Mueller.)

(Supplemental sheets attached to
Certificate No. 2131)

“Description of Land to Which Water Is Appurtenant

Township	Range	Sec.	Subdivision	Acres
25 N.	30 E.	11		626.00
		12		633.40
25 N.	31 E.	2	W $\frac{1}{2}$ SW $\frac{1}{4}$	70.00
		4	W $\frac{1}{2}$ NE $\frac{1}{4}$	76.35
		4	W $\frac{1}{2}$, W $\frac{1}{2}$ SE $\frac{1}{4}$	366.00
		6	N $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$	60.00
		7	NE $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, S $\frac{1}{2}$	588.25
		7	NE $\frac{1}{4}$ NW $\frac{1}{4}$	39.25
		8	NE $\frac{1}{4}$	150.00
		8	NW $\frac{1}{4}$	140.25
		8	S $\frac{1}{2}$	305.00
		9	N $\frac{1}{2}$	200.00
		10	W $\frac{1}{2}$ NE $\frac{1}{4}$	70.00
		16	NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{2}$ SW $\frac{1}{4}$	220.00
				[112]
		16	NW $\frac{1}{4}$	150.00
		18		611.30
		19	NE $\frac{1}{4}$	155.00
19	NW $\frac{1}{4}$, S $\frac{1}{2}$	460.00		
20	SE $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$, N $\frac{1}{2}$ S $\frac{1}{2}$	360.00		
26 N.	31 E.	12	N $\frac{1}{2}$ NE $\frac{1}{4}$	77.00
		12	S $\frac{1}{2}$ NE $\frac{1}{4}$	80.00
		12	N $\frac{1}{2}$ SE $\frac{1}{4}$	80.00
		12	S $\frac{1}{2}$ SE $\frac{1}{4}$	80.00
		12	W $\frac{1}{2}$	271.55
		20	E $\frac{1}{2}$ SE $\frac{1}{4}$	57.05
		20	W $\frac{1}{2}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$	55.10
		21	W $\frac{1}{2}$	242.70
		21	W $\frac{1}{2}$ E $\frac{1}{2}$	138.50
		22	N $\frac{1}{2}$, SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$	526.45
		28	NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$	184.75

estimony of John V. Mueller.)

Ship	Range	Sec.	Subdivision	Acres
		28	SE $\frac{1}{2}$ SE $\frac{1}{4}$	69.08
		29	SW $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$	79.40
		29	SE $\frac{1}{4}$ SE $\frac{1}{4}$	11.40
		30	E $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$	30.00
		32	E $\frac{1}{2}$	271.30
		32	SW $\frac{1}{4}$	135.25
		33	E $\frac{1}{2}$ NE $\frac{1}{4}$	72.40
		33	W $\frac{1}{2}$ NE $\frac{1}{4}$	69.60
		33	E $\frac{1}{2}$ NW $\frac{1}{4}$	55.05
		33	W $\frac{1}{2}$ NW $\frac{1}{4}$	66.40
		34	N $\frac{1}{2}$	225.00
		34	S $\frac{1}{2}$ N $\frac{1}{2}$	45.00
		34	SE $\frac{1}{4}$	141.75
		34	SW $\frac{1}{4}$	148.70
		35	S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$	172.68
		35	S $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$	161.60
N.	31 E.	1	E $\frac{1}{2}$ E $\frac{1}{2}$	71.55
		1	W $\frac{1}{2}$ E $\frac{1}{2}$	67.15
		1	E $\frac{1}{2}$ W $\frac{1}{2}$	63.75
		1	W $\frac{1}{2}$ W $\frac{1}{2}$	20.60
		2	S $\frac{1}{2}$, S $\frac{1}{2}$ N $\frac{1}{2}$	253.30
		3		336.10
		4	E $\frac{1}{2}$	101.05
		9	E $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$	340.95
		10	N $\frac{1}{2}$, SW $\frac{1}{4}$ N. of O. C. Ditch	388.75
		10	E $\frac{1}{2}$ SE $\frac{1}{4}$	74.00
		10	W $\frac{1}{2}$ SE $\frac{1}{4}$	70.95
		10	SW $\frac{1}{4}$ S. of O. C. Ditch	67.00
		11	N $\frac{1}{2}$ NE $\frac{1}{4}$	19.00
		11	W $\frac{1}{2}$, N $\frac{1}{2}$ SE $\frac{1}{4}$	295.51
			[113]	
N.	31 E.	11	S $\frac{1}{2}$ SE $\frac{1}{4}$	75.65
		12	NE $\frac{1}{4}$	147.51
		12	N $\frac{1}{2}$ NW $\frac{1}{4}$	66.85
		12	SE $\frac{1}{4}$	155.00
		12	E $\frac{1}{2}$ SW $\frac{1}{4}$	74.30
		12	W $\frac{1}{2}$ SW $\frac{1}{4}$	74.30

(Testimony of John V. Mueller.)

Township	Range	Sec.	Subdivision	Acres
		13	NE $\frac{1}{4}$ E. of Railroad	55.50
		13	NE $\frac{1}{4}$ W. of " N $\frac{1}{2}$ NW $\frac{1}{4}$	143.50
		13	E $\frac{1}{2}$ SW $\frac{1}{4}$ W. of " S $\frac{1}{2}$ NW $\frac{1}{4}$	99.50
		13	E $\frac{1}{2}$ SW $\frac{1}{4}$ E. of " SE $\frac{1}{4}$	152.98
		13	W $\frac{1}{2}$ SW $\frac{1}{4}$	66.50
		14	E $\frac{1}{2}$ NE $\frac{1}{4}$	73.35
		14	W $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$	224.70
		14	S $\frac{1}{2}$	273.65
		15		572.25
		16	E $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$	303.44
		21	NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$	190.95
		22	NE $\frac{1}{4}$	145.05
		22	NW $\frac{1}{4}$	153.00
		22	SE $\frac{1}{4}$	94.58
		22	SW $\frac{1}{4}$	136.05
		23	NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ W. of Railroad	115.35
		23	NW $\frac{1}{4}$	127.50
		23	SW $\frac{1}{4}$	137.45
		24	NW $\frac{1}{4}$ E. of Railroad	93.13
		24	NW $\frac{1}{4}$ NW $\frac{1}{4}$ W. of Railroad	2.75
		26	N $\frac{1}{2}$ NW $\frac{1}{4}$ W. of "	32.89
		27	W $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$	179.70
		27	W $\frac{1}{2}$ SE $\frac{1}{4}$	50.00
		27	SW $\frac{1}{4}$	136.40
		28	E $\frac{1}{2}$ NE $\frac{1}{4}$	73.14
		28	W $\frac{1}{2}$ NE $\frac{1}{4}$	70.75
		28	NW $\frac{1}{4}$ E. of Slough	90.00
		28	NW $\frac{1}{4}$ W. of "	57.76
		28	S $\frac{1}{2}$	217.40
		29	NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$	238.95
		29	SE $\frac{1}{4}$	133.95
		30	E $\frac{1}{2}$ SE $\frac{1}{4}$	39.00
		31	E $\frac{1}{2}$ NE $\frac{1}{4}$	33.45
		32	NE $\frac{1}{2}$ NE $\frac{1}{4}$	51.20
		32	NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$	80.92
		33	NW $\frac{1}{4}$	127.80
		35	E $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$	364.34
		36		369.60

(Testimony of John V. Mueller.)

Township	Range	Sec.	Subdivision	Acres
27 N.	32 E.	6	E $\frac{1}{2}$, E $\frac{1}{2}$ of E $\frac{1}{2}$ of W $\frac{1}{2}$	179.50
		7	NW $\frac{1}{4}$	150.95
		7	W $\frac{1}{2}$ SE $\frac{1}{4}$	65.40
		7	SW $\frac{1}{4}$ W. of Railroad	54.63
		18	E $\frac{1}{2}$ NW $\frac{1}{4}$	81.13
		18	NW $\frac{1}{4}$ NW $\frac{1}{4}$	35.00
		18	SW $\frac{1}{4}$ NW $\frac{1}{4}$	35.60
		18	NW $\frac{1}{4}$ SW $\frac{1}{4}$	35.00
28 N.	31 E.	33	E $\frac{1}{2}$ SE $\frac{1}{4}$	26.00
		34	NE $\frac{1}{4}$, S $\frac{1}{2}$	411.02
28 N.	32 E.	31	SE $\frac{1}{4}$	155.00
Total				18,340.44''

[114]

The so-called Taylor lands described in said certificates aggregate a little over 2,000 acres. I have been familiar with that property for over twenty years. Alfalfa and grain are raised on that property. I have made particular examination of this property from time to time and am acquainted with agricultural conditions generally in the State of Nevada. Without irrigation these lands would be valuable only for grazing land and worth from \$1.25 to \$2.50 per acre. As irrigated lands they are worth from \$50 to \$100 per acre. These answers would apply both as to the year 1932 and as of the present time.

I am familiar with the decree adjudicating water rights (Exhibit 10), and it is my opinion that without the use of the Humboldt Lovelock Irrigation Light & Power Company facilities the Taylor lands, relying only on the natural flow of the Humboldt

(Testimony of John V. Mueller.)

River, would not receive a sufficient amount of water to produce crops, and that the value of the lands would be approximately half of what it is with the Humboldt Lovelock Irrigation Light & Power Company reservoir rights.

The Taylor lands do not actually adjoin the Humboldt River. Water is conveyed to those lands through the Young, Old Channel, South West, and Irish American, also known as Last Chance, ditches. During the twenty years I have been familiar with that property it has not received irrigation water other than through these ditches.

The first ditch that irrigates lands in the Lovelock Valley and any of the John G. Taylor lands, is the Young Ditch. Water is diverted into the Young Ditch by means of a dam in the Humboldt River. The next point of diversion is what is commonly known as the Old [115] Channel Dam into a ditch which, for a distance, carries the Old Channel Ditch water, the South West Ditch water, and the Union Canal water. The Old Channel Ditch leaves this common diversion above the South West Ditch and where the South West Ditch takes off and continues on is known as the Union Canal and takes care of the Union Canal water. When water from the Humboldt from an upper reservoir, is turned into the river at the opening of the reservoir, it is carried down the Humboldt River and distributed to the Young Ditch, Old Channel, South West and Irish-American. The Irish-American has a

(Testimony of John V. Mueller.)

separate dam in the Humboldt channel, the first one below the Old Channel dam.

The State Engineer has regulated and directed the diversion of water into these ditches for the past six or eight years. The water when taken through these ditches and on to the Taylor lands is devoted to beneficial use thereon and has been since my acquaintance with the property.

I know that the Humboldt Lovelock Irrigation Light & Power Company, Young Ditch Company and Old Channel Ditch Company are corporations. I know that the Irish-American Ditch is not incorporated. It is my opinion that the Humboldt Lovelock Irrigation Light & Power Company have water rights which are put to beneficial use on the Taylor lands, which are those evidenced by Certificates 2130 and 2131. The Young Ditch Company and Old Channel Ditch Company [116] merely own ditches and, so far as I know, have no water rights. Their ditches are used for the transfer and conveyance of water to the Taylor lands, and there is no other means for irrigation of those lands except through those ditches. As representative of the State Engineer I participated in the division of water through these ditches, and in the course of such work I would confer with some individual designated as in charge of the distribution in the ditches by these companies. I dealt only with these parties in diverting water to the ditches, and after it reached the ditches I paid no attention to it. The

(Testimony of John V. Mueller.)

only basis I had to distribute water was in accordance with the determination of the State Engineer prior to the entry of the so-called Bartlett decree. The State Engineer's order of determination assigned the water not to the ditch companies but to the individual property owners, and in allowing water to be diverted I based my decision on the finding as to the rights of such individuals.

In distributing water pursuant to the State Engineer's order and determination I determined the amount and priority of the individual land owners served by the ditches and allotted water in accordance therewith, and some individual appointed by the ditch companies attended to actual distribution among the users. The amount allotted to the respective ditches was determined by the determination of the rights of individuals owning property served thereby. In carrying out my duties I treated the ditch companies as agencies and instrumentalities through which [117] the individual land owners received the water to which they were entitled.

ARCHIE MILLER,

a witness called on behalf of plaintiff, testified:

I am Supervising Water Commissioner of the Humboldt River and have held that position about six years. My duties are to superintend the distri-

(Testimony of Archie Miller.)

bution of the water from the Humboldt River to lands in the Lovelock Valley. My office is subordinate to that of the State Engineer.

Prior to 1930 we were guided by the order and determination of the State Engineer determining the rights and priorities of appropriators in the district. Since 1930 we have operated under the so-called Bartlett decree (Exhibit 10).

I am familiar with the various companies previously mentioned. In making allocations of water I have not had occasion to interview the executives of those companies. Prior to 1928 the water commissioner in Lovelock Valley, in addition to the duty of diverting water from the river into the ditches, also handled the reservoir water, and there was quite a bit of complaint. In 1928 the reservoir company employed their own man and the State Engineer had nothing to do with the reservoir water other than to see that it got into the ditch. The State Engineer's office made no effort to interfere with the representative of the Humboldt Lovelock Irrigation Light & Power Company. [118]

I had no direct connections with the other ditch companies. Indirectly I did, in that the total quantity which these ditches were entitled to was ascertained and turned into the ditches for distribution by the ditch companies' representatives.

I know that the allocation of water was made by the State Engineer and later, by the decree, was to the individual property owners, and that is what we

(Testimony of Archie Miller.)

tried to follow. I determined from the order or decree how much water had been appropriated by the land owners served by a particular ditch and I allowed to go into the ditch the water to which the persons owning land along the ditch were entitled.

It would have been impossible to provide water to these lands pursuant to the decree or order without use of the ditches owned by these corporations.

A. JAHN,

a witness called on behalf of plaintiff, testified:

I am Secretary-Treasurer of Union Canal Ditch Company, and have been since 1926. That company for many years has carried water from the Humboldt River to lands in the Lovelock Valley, including the lands formerly owned by John G. Taylor. The company was incorporated in 1910. Its incorporators were owners of lands served by its canal. The canal was in existence prior to incorporation of the company. [119]

The decree establishing water rights (Exhibit 10) shows certain rights to the Union Canal as appurtenant to the described lands. The company does not own lands and makes no claim to the water as against the land owner.

John G. Taylor is shown as the holder of record of 150 shares of the company's stock, and has been since 1913.

The work of the company is keeping the ditch in

(Testimony of A. Jahn.)

repair and distributing water to the several owners after it is put in the ditch by the State Engineer. It derives its entire revenue by assessment, which is used to pay for the maintenance of the ditch. Land owners are entitled to the use of the ditch proportionately to the amount of stock held by them. Its ditch has been used to convey water from the Humboldt River to the Taylor lands, where it is placed to beneficial use.

8,000 shares of the company's stock were issued for cash, sold to the land owners along the ditch at par, and the money used to build the canal. The company never issued any stock for property.

The form of stock certificates used by the company is as follows:

“Location of Principal Office: Lovelock,
Nevada.

Resident Agent: PETER ANKER
Incorporated Under the Laws of
State of Nevada.

No.	Shares
	Union Canal Ditch Company [120]

“Capital Stock \$80,000.00 8000 Shares,
Par Value \$10.00 Each

Fully Paid Up and Subject to Assessments

“This Certifies that.....
is the owner of.....Shares of the
Capital Stock of

Union Canal Ditch Company
transferable only on the books of the Corpora-

(Testimony of A. Jahn.)

tion by the holder hereof in person or by Attorney upon surrender of this Certificate properly endorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and to be sealed with the Seal of the Corporation this.....day of, A. D. 19.....

[Seal]

President Secretary
Shares \$10.00 Each''

I have made a number of transfers of certificates to Federal Farm Land Bank, as pledgee. Under my practice I would not issue a new certificate except to a land owner along the ditch without authority of the board of directors, although there is no such limitation in the articles or by-laws of the corporation. The company derives no revenue from its operations, but the users of the ditch have paid about 50 cents an acre per year for the past twelve or fifteen years for the operation and maintenance thereof, and were entitled to the benefit of the use of the ditch to convey water to their lands. This is done by assessment. The amount has varied in different years. Aside from this source there are no other revenues. In a number of [121] cases certificates were transferred to the Federal Land Bank, as pledgee. Later, when they had foreclosed, new certificates to the Bank, as owner, were issued.

(Testimony of A. Jahn.)

The transfers to the Federal Land Bank, as pledgee, were made at the bank's request when they had a mortgage on the land. If they acquired title to the land, then the certificates would be transferred to them as owners. All of the stockholders of the company own lands supplied by water through the ditches of the company, with the exception of John G. Taylor. In his case water is carried through the company's ditch to the lands described in the decree which he then owned. The moneys received for maintenance of the ditch have averaged 50 cents per acre over a number of years. These assessments have been imposed in different amounts as deemed necessary by the directors. All the money received by the company was through such assessments at a certain rate per share. The number of shares owned was in proportion to the number of acres owned by these parties. The company has never been engaged in any business except the maintenance of its canal and the transmission of waters. Its only expenses have been in connection with such ditches, and no stock has been sold to persons not owning lands served by the ditch.

John G. Taylor acquired 150 shares in 1913, before I was a director. He was not a land owner at that time. That stock was originally connected with lands served by the Union Canal owned by a man named Lauritzen, who bought the land with the stock and transferred it to W. C. Noteware, to whom Certificate No. 63 for 150 shares was issued

(Testimony of A. Jahn.)

April 26, 1913. Noteware transferred to Taylor, to whom Certificate No. 65 was issued March 16, 1914.

There is nothing in the articles or by-laws of the [122] company or in its stock certificates limiting the use of the ditch in proportion to the amount of stock held. There has never been any case where stock has gone delinquent for non-payment of assessment or the necessity of taking any steps by reason of such non-payment. Since the issuance of the 150 shares to John G. Taylor the canal has been used for the transmission of water to the lands owned by him at the time of issuance.

H. W. ROBERTSON,

a witness called on behalf of plaintiff, testified:

I am Secretary of the Old Channel Ditch Company, and have been for four years. This ditch is used to transmit water from the Humboldt River to lands bordering on the ditch, both natural flow and storage water. Water has been diverted through the ditch to the lands formerly owned by John G. Taylor, and applied to beneficial use thereon.

The stockholders of the company all own lands served by water transmitted through the ditch. This has been true throughout my acquaintance with the company. Its sole business is the maintenance and operation of the ditch, and it owns no property. The expenses of maintenance and operation are paid by assessment on the stockholders.

(Testimony of H. W. Robertson.)

I am also secretary of Humboldt Lovelock Irrigation Light & Power Company. It maintains a dam, impounding waters which are, when needed, discharged into the river and taken [123] out by the ditches to which reference has been made. Certain of such water is transmitted to the lands formerly owned by Taylor and put to beneficial use thereon. Taylor has been a stockholder of the company since its incorporation, holding about 37,000 shares, and the W. C. Pitt interests now hold about 28,000 shares. Certain transfers have been made, when Pitt sold portions of his ranch and with the land transferred shares of stock. After such transfer the water was put to beneficial use on the lands so transferred. Both of these interests hold Class A stock, and the remainder of that class of stock is also held by land owners served with water from the company's facilities. No water has been furnished to Class B stockholders since my connection with the company.

Certificates have been issued to the Federal Land Bank, as pledgee, also to the First National Bank of Reno, Richard Kirman and C. R. Lewis, the latter as pledgees of Mr. Pitt. These last named parties now own the Pitt ranch, having foreclosed on it. The mortgage was foreclosed about 1932, and the stock transferred to these people as owners. I know of only one case where stock was transferred to a party not a land owner, and that is 990 shares of Class B stock held by one E. E. Sullivan. There

(Testimony of H. W. Robertson.)

have been some sales of the stock between one farmer and another. The corporation itself has not sold stock other than to land owners.

I know of no class A stock held by a person not a [124] land owner.

Mr. Prince A. Hawkins owns 16,553 shares of Class B stock. He also owns lands in the Lovelock Valley. The Class B stock has not received water for approximately 10 years, as there was not enough available to serve that class.

The form of stock certificate issued by the company is as follows:

“Incorporated under the laws of Nevada

“No..... Shares

Class Stock

Humboldt Lovelock Irrigation Light & Power Co.

Capital Stock \$145,953

Class A Stock, \$120,953, Assessable

Class A Stock and Class B Stock, \$145,953, Assessable

“This Certifies that..... is the owner of..... shares, of one dollar each, full paid, but assessable, of the Class..... Capital Stock of Humboldt Lovelock Irrigation Light & Power Company transferable only on the books of the Company at Lovelock, Nevada, in person or by duly authorized attorney, upon

(Testimony of H. W. Robertson.)

surrender of this Certificate properly endorsed.

“It is mutually agreed between the holder hereof and the Humboldt Lovelock Irrigation Light & Power Company and its stockholders as follows: That Class A stock is entitled to the preferential use of water from the Company to a maximum quantity of Ten Thousand acre feet each year, to be distributed pro rata [125] if requested, for the irrigation of lands, owned or irrigated by such stockholder, lying under or irrigated by means of water used through either the Irish-American or Last Chance, Old Channel, Young, or South West ditch or ditches situated in Lovelock Valley, Nevada, that such preferential use is expressly limited to such lands lying under said named ditches, and upon Class A stock being transferred to a transferee not a holder of Class A stock and not entitled to exercise such preferential use, Class B stock shall be issued to such transferee in lieu of the Class A stock so transferred; that, subject to such preferential right of Class A stock, Class A stock and Class B stock is entitled and has the same right to the use of water from the Company each year, to be distributed pro rata if requested, for the irrigation of lands owned or irrigated by such stockholder lying under or irrigated by means of water used through any ditch or ditch system in Lovelock Valley Nevada; that the price to be charged any stockholder of

(Testimony of H. W. Robertson.)

Class A stock or Class B stock for water furnished for irrigation purposes shall not exceed Seventy-five cents per acre foot per season and this limitation of a maximum charge shall not be increased by any amendment of the Articles of Incorporation, or in any way or manner whatsoever; provided, however, that the limitation of said maximum charge of Seventy-five cents per acre foot per season shall not apply to any water, in excess of the pro rata share, received by any stockholder from the Company.

“In Witness Whereof, the said Company has caused this [126] Certificate to be signed by its duly authorized officers and to be sealed with the seal of the Company at Lovelock, Nevada, this.....day of....., A. D. 19.....

.....
Secretary

.....
President”

DEFENDANT’S EXHIBIT B

is a copy of the minutes of the incorporators’ meeting of Humboldt Lovelock Irrigation Light & Power Company held July 20, 1909. The original articles of incorporation of said company as therein set forth differ from the amended articles shown in Plaintiff’s Exhibit No. 1 in the provisions of paragraph Fourth, which in the original articles provide as follows:

“Fourth. The total authorized capital stock of this corporation shall be five hundred thou-

(Testimony of H. W. Robertson.)

sand dollars (\$500,000.00), divided into five hundred thousand shares (500,000), of the par value of one dollar (\$1.00) per share, all of which shall be common stock. The amount of subscribed capital stock with which it will commence business is two thousand dollars (\$2,000.00); The amount actually subscribed is two thousand dollars (\$2,000.00), and the amount actually paid up is one thousand dollars (\$1000.00).

“After the amount of the subscribed price of the capital stock has been paid in, or after it shall have been issued as fully paid up, it shall not be subject to assessments by the corporation except for the following purposes. All stock shall always be assessable and assessed by the corporation, after the amount of the subscribed price thereof [127] has been paid, and after it shall have been issued as fully paid up, as well as before, for the purpose of repairing and maintaining the property and business of the corporation and replacing its worn out or destroyed property.

“The capital stock of this corporation may be paid into the corporation either in cash, services, or by sale and transfer to the company of real or personal property, as in the judgment of the Board of Directors seems most advantageous to the company, and stock may be issued in exchange for such property, services,

(Testimony of H. W. Robertson.)

or cash and in such amounts as the Board of Directors may advise.”

Said minutes also show that upon the offer of W. C. Pitt to transfer to the company water rights represented by Application No. 1098, dated August 21, 1908, and other properties, 15,000 shares of the company's stock were directed to be issued to W. C. Pitt.

Said minutes further show that W. C. Pitt, John G. Taylor and other parties having subscribed for or expressed a desire to subscribe for the capital stock of the corporation, it was resolved:

“Now Therefore, as an inducement for the immediate purchase of the capital stock of the Company, in addition to the dividends, which said persons shall receive as stockholders, which may from time to time be declared by the Directors, this Company is hereby authorized to enter into a contract with said persons whereby this Company shall always, during the irrigating seasons, furnish to each of said [128] persons, for irrigating purposes the use of such proportion of the waters of this Company that may be designated by the Board of Directors from time to time for irrigating purposes, as his amount of stock in this Company, for which he has now subscribed or shall subscribe for before August 19th, 1909, shall from time to time bear to the total amount of subscribed stock in

(Testimony of H. W. Robertson.)

this Company, at a price not to exceed seventy-five cents per year for each acre foot of water. Provided however that the use of all waters of this Company shall always be under and in accordance with the laws of Nevada, and all rules and regulations which the Board of Directors may from time to time establish. The President and Secretary of the Company are hereby authorized to execute such contracts on behalf of the Company.”

DEFENDANT'S EXHIBIT "C"

is a copy of the by-laws of Humboldt Lovelock Irrigation Light & Power Company, which contain no restriction as to sale or transfer of the stock of said company. Said by-laws, however, provide in Article XIII as follows:

“Sec. 1. The proper irrigation of lands belonging to the stockholders of this Company shall always be this Company's primary object, and during the irrigating seasons no waters of this Company shall ever be used for any other purpose if such waters are necessary to properly irrigate the lands of the Company's stockholders.”

It was thereupon stipulated between counsel for the respective parties that, pursuant to decree of foreclosure and sale in an action pending in the United States District Court, [129] in and for the District of Nevada, entitled “W. J. Tobin, as Re-

(Testimony of H. W. Robertson.)

ceiver of The Reno National Bank vs. John G. Taylor, et al.," No. H-114, the lands subject to the mortgage from John G. Taylor, Inc. to The Reno National Bank, set forth as Exhibit 2 herein, and the shares of stock described in the complaint herein were duly sold by the Special Master in Chancery appointed by the Court, and that all right, title and interest of The Reno National Bank, Reconstruction Finance Corporation, John G. Taylor, Inc. and John G. Taylor therein were duly sold and thereafter became and are vested in the substituted plaintiff, Pacific States Savings & Loan Company, without prejudice, however, to any rights of defendant herein; that said lands and said stocks were separately sold pursuant to said decree; that such separate sale was made without prejudice to the claims of plaintiff that the stocks pass as an appurtenance to the lands.

H. B. KRUSE,

a witness called on behalf of plaintiff, testified:

I am Secretary of Young Ditch Company, and have been such since its organization in 1915. The total number of shares of said company is 6,000, of which 2,880 stand in the name of John G. Taylor, who is the largest stockholder of the company and whose lands are the largest tract served by the Young Ditch Company.

(Testimony of H. B. Kruse.)

The company maintains and operates the Young Ditch and I do not know of any other business in which it [130] has been engaged. This has been true since its organization.

The water passed through the ditch is brought to the lands of the various owners and there placed to beneficial use. The stockholders are all land owners served by the ditch, and I know of no stockholders not owning lands served thereby. There have been some transfers of stock to the Federal Land Bank, as pledgee, in connection with mortgages on the lands, but I do not think there have been any transfers or sales of stock apart from such pledges.

The cost of maintaining the ditch is defrayed by assessment on the stockholders. I know of no other source of moneys wherewith to pay expenses. I do not think that the company itself claims any water rights outside of the right to the ditch.

The form of stock certificate used by the company is as follows:

“Incorporated Under the Laws of the State of Nevada, August 21, 1915

“No..... Shares.....

Young Ditch Company

Capital Stock \$60,000.00 6,000 Shares,

Par Value \$10.00 Fully Paid and Assessable

Principal Office, Lovelock, Nevada

Resident Agent, John G. Taylor

“This Certifies that.....is the owner of.....Shares of the Capital

(Testimony of H. B. Kruse.)

Stock of Young Ditch Company transferable only on the books of the Corporation by the holder hereof in person or by Attorney upon [131] surrender of this Certificate properly endorsed.

“In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and to be sealed with the Seal of the Corporation this.....day of, A. D. 19.....

[Seal]

Secretary

President

Shares \$10.00 Each”

Certificate No. 14 for 142.81 shares of Young Ditch Company stock was issued to Wanda Taylor on December 23, 1918, and assigned to John G. Taylor February 25, 1928. I do not know whether she was a land owner along the ditch during that time. I think I know all the other stockholders. When I issue certificates I do not require the stockholders to satisfy me that they are land owners because I know them all. I know of nothing in the articles or by-laws of the company or the stock certificate which requires that stockholders shall be land owners.

At the organization meeting of the company the following resolution was adopted:

“On motion duly made, seconded and unanimously carried, it was resolved that the Presi-

(Testimony of H. B. Kruse.)

dent and Secretary of the company be authorized and directed to have the proper and necessary deed of conveyance to this company of all the interest of the subscribers of the capital stock of this company, transferring all their right, title and interest [132] of, in and to all water, water rights, dams, ditches, canals, flumes and easements now held and owned by them in what is known as and called the Young Ditch, a co-partnership, the tenants in common of said interest in said Young Ditch being as follows: (names of parties here stated in resolution);

“And be it further resolved that upon the execution by said above-named parties of such deed of conveyance to said Young Ditch Company, that the President and Secretary of this company are hereby authorized and directed to issue said parties, as payment in full for their said interest in said Young Ditch, certificates of stock in this corporation, fully paid up, in amount as their respective interest so conveyed bears to the number of shares 6,000, representing the capital stock of this company.”

Such conveyances were made and stock issued in accordance with that resolution, as appears from the minutes of the meeting of the board of directors held on November 1, 1915, as follows:

“* * * that proper deed of conveyance between the subscribers to the capital stock of

(Testimony of H. B. Kruse.)

this company, conveying all their interest in the Young Ditch to this company had been drawn and had been signed and executed by all said parties, with the exception of S. R. Young, who refused to join in the incorporation and desired to hold his interest [133] separate and distinct from that of the corporation.”

At that time I owned a two-share interest in the ditch and owned lands served thereby. I still own the land but think that I executed some conveyance to Young Ditch Company. I do not know whether such conveyance included any water rights.

The stock book shows that certificates were issued for 253.31 shares to Nevada Fire Insurance Company, as pledgee of Mrs. Paula Jacobson, for 393.2 shares to Federal Land Bank of Berkeley, as pledgee of H. M. Damm, and for 642.80 shares to said bank as pledgee of John Holmstrom.

A copy of the by-laws of Young Ditch Company was introduced in evidence by defendant as Exhibit “F”. The same contained no provisions restricting stock ownership to land owners served by the ditch.

P. L. NELSON,

a witness called on behalf of defendant, testified:

On May 12, 1932, I was Cashier of The Reno National Bank and of Bank of Nevada Savings &

(Testimony of P. L. Nelson.)

Trust Company. I have been such cashier since 1931, and prior thereto for about fourteen years Assistant Cashier of those banks. After the banks were closed I was employed by the Receivers of the Bank of Nevada Savings & Trust Company in connection with winding up its affairs. [134]

Three notes payable to Bank of Nevada Savings & Trust Company, signed by John G. Taylor, Inc., by John G. Taylor, President, and A. R. Randolph, Secretary, each dated at Reno, Nevada, payable on demand, with interest at 7% per annum, one dated May 12, 1932, in the principal amount of \$7500, another dated May 28, 1932, in the principal amount of \$10,000, and the other dated June 4, 1932, in the principal amount of \$15,000, were, while I was employed by the Receiver of the Bank of Nevada Savings & Trust Company, in the possession of the Receiver and among the files and records of that bank. Each of said notes bears a lead pencil notation in the upper left-hand corner of the initials "J.S." These are the initials of Jerry Sheehan. According to the then practice and custom of Bank of Nevada Savings & Trust Company and The Reno National Bank, it was the custom for the officer making the loan to initial it for future reference as the party who handled the transaction or would be responsible for the loan.

The first note for \$7500 has an endorsement showing payment of \$675 on principal made June 30, 1936, from the sale of 5 shares of First National

(Testimony of P. L. Nelson.)

Bank of Lovelock stock to C. H. Jones. That note also has an endorsement showing payment of \$70. interest to June 30, 1932.

The second note for \$10,000 has an endorsement showing payment of \$62.22 interest to June 30, 1932.

The \$7500 note also has a lead pencil notation on the bottom "shearing" in Mr. Sheehan's handwriting. According to the [135] banking practice and customs, that notation indicates that the advance was made for shearing expenses of the maker. I cannot say definitely whether the money advanced was so used.

The \$15,000 note dated June 4, 1932, has a lead pencil notation "taxes and wages," which indicates that the advance was for the purpose of paying such items.

DEFENDANT'S EXHIBIT "H"

is in words and figures as follows:

"Reno, Nevada, April 29, 1932

"As collateral security for the payment of all of my present indebtedness to Bank of Nevada Savings & Trust Company, of Reno, Nevada, and all of my future indebtedness to said Bank, which I may incur hereafter from any cause or upon any consideration I have assigned, and do hereby assign, deliver and deposit with said Bank the following described property, to-wit:

(Testimony of P. L. Nelson.)

55 shs. Reno National Bank, Reno, Nev.
Ctf. No. 1030.

225 shs. First Natl. Bank, Winnemucca,
Cap. stock, Ctf. No. 253

5 shs. First Natl. Bank, Lovelock, Nev.
Cap. stock Ctf. No. 49

50 shs. Reno Natl. Bank, Reno, Nev., Cap.
stock, Ctf. No. 673

15 shs. Churchill County Bank, Fallon,
Nev., Ctf. No. 74

150 shs. Union Canal Ditch Co., Cap. stock,
Ctf. No. 65.

37,273 shs. Humboldt. Lovelock Irr. Lt. & Pr.
Class "A" Ctf. Nos. 2, 23, 59, 71, 74, 96,
99, 108 and 111

2,857 shs. Young Ditch Co., capital stock,
Ctf. Nos. 16 and 24.

1,121 1/3 shs. The Old Channel Ditch Co.
Cap. Stock, Ctf. Nos. 27, 35, 59, 62, 70,
103.

.....of the.....value of
.....Dollars, [136]

and hereby given authority to said Bank, or its assigns, to call for such additional security as it, or its assigns, may deem proper, which security I agree to give on demand, and on default being made in giving such security or in paying said indebtedness, then all of my indebtedness to said Bank shall be considered due and immediately payable, whether otherwise due or

(Testimony of P. L. Nelson.)

payable or not, at the option of said Bank, or its assigns, and the said Bank is hereby given authority to sell and deliver the whole or any part of said property, at either public or private sale, at any time or place, either with or without demand for payment, either with or without notice of such sale, and either with or without advertisement of such sale, as said Bank, its officers or agents may elect; such demand, notice and advertisement are hereby waived. At such sale said Bank or any other person or persons may become the purchaser of the whole or any part of said property. After deducting all costs and expenses incurred in connection with such sale, including reasonable attorney's fee, and the amount of said indebtedness, out of the proceeds of such sale, the surplus, if any, shall be paid to me or my heirs, or assigns, and I agree to pay any deficiency there may be, if any, in the payment of said indebtedness and costs and expenses of such sale, after the proceeds of sale have been applied as aforesaid. The Bank or its assigns, may permit the substitution of security, and all substituted security, and/or additional security, shall be subject to the terms hereof as if originally deposited.

JOHN G. TAYLOR." [137]

All of the certificates described in Exhibit "H" were in the possession of the bank at the time of the receivership and have been and still are in the Re-

(Testimony of P. L. Nelson.)

ceiver's possession, except that for 5 shares of First National Bank of Lovelock stock, which was sold.

Defendant introduced in evidence certificates representing the stock described in the complaint herein, all of which are in the form of the respective stock certificates of the companies mentioned as hereinbefore set forth, as follows:

Certificate No.	Shares	Date
Humboldt Lovelock Irrigation Light & Power Company Class A		
2	7200	January 2, 1917
23	8120	January 2, 1917
59	100	January 2, 1917
71	1000	June 29, 1917
74	20000	June 17, 1918
96	450	November 10, 1924
99	270	May 18, 1925
108	49	September 12, 1927
111	84	November 12, 1927

Stock of Union Canal Ditch Company

65	150	March 16, 1914
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Stock of Young Ditch Company

16	2714.20	January 23, 1918
24	142.80	February 27, 1928
27	20	January 31, 1902

[138]

Certificate No.	Shares	Date
Old Channel Ditch Company		
35	80	May 7, 1904
59	93 $\frac{1}{3}$	May 9, 1910
62	80	June 1, 1912
70	120	December 21, 1915
103	182	November 1, 1928

(Testimony of P. L. Nelson.)

Each of said certificates was issued in the name of John G. Taylor, and each thereof is endorsed in blank by John G. Taylor in the presence of and witnessed by J. Sheehan. All of said certificates were produced from the files and records of the Bank of Nevada Savings & Trust Company receivership. The records of the Bank of Nevada Savings & Trust Company show that there was paid to John G. Taylor, Inc. the principal amount of the notes above described, \$32,500. The same note teller handled the loan transactions for The Reno National Bank and the Bank of Nevada Savings & Trust Company. The teller at the time these transactions were handled was Miss Jean Campbell. Payments made for the account of the Bank of Nevada Savings & Trust Company and receipts for its account were totaled each day and the difference credited or charged to the account of the Bank of Nevada Savings & Trust Company on the books of The Reno National Bank, with corresponding entries on the books of the former. The \$32,500 credited to John G. Taylor, Inc. was made through a credit from The Reno National Bank to the First National Bank of Winnemucca. Taylor had an account at the Winnemucca Bank but not at either of [139] the Reno banks. The obligation evidenced by the notes mentioned was solely to the Bank of Nevada Savings & Trust Company. With the exception of the payment on account of principal and interest previously described, the balance of prin-

(Testimony of P. L. Nelson.)

incipal and accrued interest is still due to the Receivership of the Bank of Nevada Savings & Trust Company.

Mr. Seaborn, State Superintendent of Banks, took over the Bank of Nevada Savings & Trust Company December 9, 1932. I was employed by him thereafter, in charge of its assets and supervision of necessary work. At that time the notes and stocks previously described were in the files and records of that bank and remained there throughout the receivership of Mr. Seaborn and that of his successor, Leo F. Schmitt, and have so remained up to the present date.

The stock of the Bank of Nevada Savings & Trust Company and that of The Reno National Bank was held in corresponding interests by the same stockholders. The banks occupied the same premises and had the same officers. The amounts represented by the notes previously described were advanced as follows: \$7500, represented by the note of May 12, 1932, was advanced on May 13, 1932; \$10,000, represented by the note of May 28, 1932, was advanced on June 1, 1932, and \$15,000, represented by the note of June 4, 1932, was advanced June 6, 1932. I do not recall seeing Exhibit "H" prior to the time Mr. Seaborn, as Superintendent of Banks, took charge of the Bank of Nevada Savings & Trust Company, [140] on December 9, 1932. I had nothing to do with its actual receipt. It is in the customary bank form used for many years. I

(Testimony of P. L. Nelson.)

do not know what happened to this particular document.

It was part of my duties as cashier to keep informed as to collateral deposited to secure loans. I have no recollection of having heard anything about the advances made to John G. Taylor, Inc. It was not always customary to make any notation of the collateral on the notes representing particular loans. Sometimes it was done. It was not customary to note loans in respect of which collateral was held on the collateral envelope itself.

JERRY SHEEHAN,

a witness called on behalf of defendant, testified:

From 1924 until the bank closed I was Vice-President of Bank of Nevada Savings & Trust Company, and during the same period I occupied the same position with The Reno National Bank. I was also a director of both banks. The personnel and directorate of both banks was the same, the same persons acting in an equivalent capacity for both throughout the period I was there. Both banks conducted their business in the same banking room.

The initials "J. S." on the notes of John G. Taylor, Inc. to Bank of Nevada Savings & Trust Company, above described, are my initials. They represent my approval and authorization of the loan. The notation "taxes and wages" on the \$15,000 note dated June 4, 1932, is in my handwriting. The

(Testimony of Jerry Sheehan.)

notation [141] was placed thereon to indicate the purpose of the loan. I think I received the information from the cashier of the First National Bank of Winnemucca. The loan was made because it was understood to be necessary to furnish Mr. Taylor with some expense money. The notation on the \$7500 note "shearing," is in my handwriting, and signifies that the request for money was for that purpose.

I have no recollection of having seen the collateral agreement dated April 29, 1932, defendant's Exhibit "H". I do not know how it was obtained. I am familiar with Mr. Taylor's signature, and the signature thereon is his. I do not know of my own knowledge whether collateral was exacted from John G. Taylor, Inc. as security for the notes above referred to. I was familiar with the Nevada law that no loans could be made by a savings bank in Nevada without collateral. Until this morning I never saw the stock referred to in the collateral agreement. The transaction was handled through Winnemucca to the best of my recollection.

I made the request of Mr. Taylor for the collateral by way of stock in various corporations. At the time we attempted to consolidate the Taylor loans in the early part of 1932, there was discussion of security with Mr. Taylor, and he furnished a list of all his property, both that of John G. Taylor, Inc. and of himself personally. I do not recall that the water stocks were specifically mentioned. He

(Testimony of Jerry Sheehan.)

agreed to furnish as collateral everything that he had. He complied with our request that he furnish as collateral all the stock in the various corporations. I know Mr. Taylor borrowed \$32,500.00 from the Bank of Nevada Savings & Trust Company and gave his notes shown in the evidence and put up collateral as shown by the collateral agreement.

There was considerable discussion in the early part of 1932 about the consolidation of the Taylor loans, which were previously unsecured. Several discussions were had, [142] both with Mr. Taylor and with the officials of the Reconstruction Finance Corporation. It was repeatedly stated that all of the property of John G. Taylor, Inc. and John G. Taylor was to be put up as security. Following these conversations the loans were consolidated into a single loan of \$700,000, represented by note from John G. Taylor, Inc. to The Reno National Bank, secured by chattel mortgage and real estate mortgage. At the time the real estate mortgage was being prepared, Mr. Taylor was told that he was expected to give all the security which his company had, and he agreed to do so. This note and the mortgages were later assigned to the Reconstruction Finance Corporation, which advanced to The Reno National Bank more than One Million Dollars. In the discussions with the officials of the Reconstruction Finance Corporation the properties of John G. Taylor and John G. Taylor, Inc. were discussed at considerable length. I answered all

(Testimony of Jerry Sheehan.)

questions respecting the same to the best of my ability. I probably stated that the Lovelock properties were irrigated, and probably told them about the Pitt-Taylor dam. I knew that about 2,000 acres of the land in question were irrigated and that the Pitt-Taylor dam was used for such irrigation. I probably told these officials of the value attaching to the lands by reason of such irrigation.

The transaction with the Reconstruction Finance Corporation was with The Reno National Bank, and the Taylor loan was made by that bank. The Bank of Nevada Savings & Trust Company had nothing to do with it. At the time of the negotiations we had no collateral. The mortgage was taken [143] for the purpose of that transaction. The mortgage was submitted to the representatives of the Reconstruction Finance Corporation for their consideration, and, after discussion, assigned to them. I know of nothing other than the real estate and chattel mortgages so assigned.

I supposed all the vested water rights belonged to John G. Taylor, Inc., but did not know that they were represented by stock. I knew about the reservoir stock but not about the ditch companies. I thought they were vested rights attached to the ranches. If I had known that John G. Taylor, Inc. owned stock in the water companies I think I would have asked for a transfer thereof. I do not remember when, if at all, I first saw the water stock certificates here in question. I must have ex-

(Testimony of Jerry Sheehan.)

amined the collateral at the time of going through the bank, but I do not recall it. It was our custom to list the collateral behind each loan and furnish the officers a copy of such report which should be on file in each bank. I think this custom was observed respecting these loans and collateral.

LEO F. SCHMITT,

a witness called on behalf of defendant, testified:

I am Receiver of the Bank of Nevada Savings & Trust Company, and have served in that capacity since February 28, 1934. I have possession of all the assets and properties of that bank and received the same from E. J. Seaborn, [144] the State Superintendent of Banks. Among the assets so received were the collateral agreement and stock certificates of the water companies, hereinbefore referred to. These have been in my possession continuously since my appointment.

In December, 1934, I paid an assessment of \$6522.77 on the stock of the Humboldt Lovelock Irrigation Light & Power Company, and in November, 1936, an additional assessment of \$3354.57. In March, 1936, an assessment of \$112.15 was paid on the stock of Old Channel Ditch Company. No other assessments have been paid by me.

At the time of paying the assessments referred to I knew there was a dispute respecting owner-

(Testimony of Leo F. Schmitt.)

ship of the stock, and before making payments it was agreed with Reconstruction Finance Corporation that in the event it was adjudicated to be the owner of the stock, the payments would be adjusted in accordance with the rights of the parties. [145]

STIPULATION.

It is hereby stipulated that the foregoing statement of evidence is a true, complete and properly prepared statement of the substance of all of the testimony and evidence introduced on the trial of the above-entitled cause, and that the same may be settled and allowed forthwith.

(Signed) BROBECK, PHLEGER &

HARRISON

ORRICK, DAHLQUIST, NEFF
& HERRINGTON

Attorneys for Plaintiff and
Appellant.

PLATT & SINAI

Attorneys for Defendant and
Appellee. [146]

ORDER SETTLING STATEMENT OF
EVIDENCE.

The foregoing statement of evidence is a true, complete and properly prepared statement of the substance of all of the testimony and evidence in-

troduced and admitted on the trial of the above-entitled cause in the United States District Court for the District of Nevada, all parts not essential to the questions presented by the appeal being omitted, and the same is hereby settled, allowed and approved as the Statement of Evidence on Appeal from the final decree of said court.

Dated: October 4th, 1938.

FRANK H. NORCROSS

District Judge.

[Endorsed]: Filed Oct. 4, 1938. [147]

[Title of District Court and Cause.]

STIPULATION AS TO RECORD.

It Is Hereby Stipulated by and between the parties to the above-entitled matter that the parts of the record, proceedings and evidence to be included in the record on appeal herein be and the same are hereby designated as follows:

- (1) Bill of Complaint;
- (2) Demurrer;
- (3) Minute Order Overruling Demurrer; [148]
- (4) Answer;
- (5) Supplemental Complaint;
- (6) Opinion of the Court;
- (7) Findings of Fact and Conclusions of Law;
- (8) Final Decree;
- (9) Petition for Rehearing (omitting the argument in support thereof therein contained);

- (10) Memorandum Decision on Petition for Re-hearing;
- (11) Petition for Appeal;
- (12) Assignment of Errors;
- (13) Order Allowing Appeal;
- (14) Undertaking on Appeal;
- (15) Statement of the Evidence;
- (16) Order Enlarging Time to Prepare Transcript of Record and to Docket Appeal;
- (17) This stipulation.

The Clerk is hereby requested to prepare for transmission to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, certified copies of the aforementioned papers as and for the record on appeal and to transmit the same, together with the original citation, to the Clerk of said United States Circuit Court of Appeals for the Ninth Circuit.

BROBECK, PHLEGER &
HARRISON

ORRICK, DAHLQUIST, NEFF
& HERRINGTON

Attorneys for Plaintiff and
Appellant.

PLATT & SINAI

Attorneys for Defendant and
Appellee.

[Endorsed]: Filed Oct. 4, 1938. [149]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT OF RECORD.

United States of America,
District of Nevada—ss.

I, O. E. Benham, Clerk of the District Court of the United States for the District of Nevada, do hereby certify that I am custodian of the records, papers and files of the said United States District Court for the District of Nevada, including the records, papers and files in the case of Pacific States Savings & Loan Company, a corporation, substituted for Reconstruction Finance Corporation, a corporation, Plaintiff, vs. Leo F. Schmitt, as Receiver of Bank of Nevada Savings & Trust Company, Carson Valley Bank, Tonopah Banking Corporation and Virginia City Bank, Defendant, said case being No. H-117 on the equity docket of said court.

I further certify that the attached transcript, consisting of 154 typewritten pages numbered from 1 to 154, inclusive, contains a full, true and correct transcript of the proceedings in said case and of all papers filed therein, together with the endorsements of filing thereon, as set forth in "Stipulation as to Record" filed in said case and made a part of the transcript attached hereto, as the [150] same appears from the originals of record and on file in my office as such Clerk in Carson City, State and District aforesaid.

I further certify that the cost for preparing and certifying to said record, amounting to \$58.25, has been paid to me by Messrs. Brobeck, Phlegar & Harrison, of counsel for appellant in the above entitled cause.

And I further certify that the original citation, issued in said cause, is hereto attached.

Witness my hand and the seal of said United States District Court this 17th day of October, A. D. 1938.

[Seal]

O. E. BENHAM

Clerk, U. S. District Court,
District of Nevada. [151]

[Title of District Court and Cause.]

CITATION ON APPEAL.

The United States of America—ss.

The President of the United States of America:

To Leo F. Schmitt, as Receiver of Bank of Nevada Savings & Trust Company, Carson Valley Bank, Tonopah Banking Corporation and Virginia City Bank, and to Platt & Sinai, his attorneys, Greetings:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth [152] Circuit to be holden at the City and County of San Francisco, State of California, within thirty (30) days from the date hereof pursuant to an order filed and of record in

the office of the Clerk of the United States District Court for the District of Nevada, allowing an appeal from a decree made and entered on April 6, 1938, which became final on June 27, 1938, upon the denial of a petition for rehearing seasonably made and filed and duly entertained by the Court, in the above-entitled cause wherein Pacific States Savings & Loan Company, a corporation, substituted for Reconstruction Finance Corporation, is appellant, and you are appellee, to show cause, if any there be, why the said decree should not be reversed and corrected, and why speedy justice should not be done the parties in that behalf.

Witness The Honorable Frank H. Norcross, Judge of the United States District Court for the District of Nevada, this 22nd day of August, 1938.

FRANK H. NORCROSS

Judge of the United States District Court for the District of Nevada. [153]

Due service and receipt of a copy of the within Citation on Appeal is hereby admitted, this 22nd day of August, 1938.

PLATT & SINAI

Attorneys for Appellee.

[Endorsed]: Filed Aug. 22, 1938. [154]

[Endorsed]: No. 9015. United States Circuit Court of Appeals for the Ninth Circuit. Pacific States Savings & Loan Corporation, a corporation, substituted for Reconstruction Finance Corporation, a corporation. Appellant, vs. Leo F. Schmitt, as Receiver of Bank of Nevada Savings & Trust Company, Carson Valley Bank, Tonopah Banking Corporation and Virginia City Bank, Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Nevada.

Filed October 18, 1938.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.